

1 A bill to be entitled
2 An act relating to administrative procedures; amending
3 s. 110.205, F.S.; exempting certain administrative law
4 judges and agency hearing officers from the Career
5 Service System; amending s. 120.52, F.S.; providing
6 definitions; conforming cross-references; creating s.
7 120.521, F.S.; providing for representation of parties
8 in administrative hearings; providing a definition;
9 providing a procedure for designating a qualified
10 representative; providing qualification criteria and
11 standards of conduct for a qualified representative;
12 amending s. 120.525, F.S.; providing notice
13 requirements for public meetings, hearings, and
14 workshops; providing notice requirements for public
15 meetings, hearings, and workshops utilizing
16 telecommunications; requiring the designation of a
17 presiding officer; requiring an agency to afford equal
18 consideration to all evidence, testimony, and argument
19 presented; providing for construction; amending s.
20 120.54, F.S.; removing provisions relating to uniform
21 rules of procedure; creating s. 120.5401, F.S.;
22 requiring the adoption of uniform rules of procedure
23 governing the conduct of administrative action and
24 hearings; authorizing an agency to seek an exception
25 to such rules of procedure; creating s. 120.5402,

26 F.S.; providing definitions; providing for the
27 mandatory correction of a rule to conform to a change
28 in statute; requiring publication of a notice of
29 mandatory correction of rule in the Florida
30 Administrative Register; providing requirements for
31 the content of such notice; requiring the suspension
32 of an affected rule in specified circumstances;
33 providing a procedure for granting or denying a timely
34 objection to a proposed mandatory correction;
35 providing that a mandatory correction and the denial
36 of an objection are not final agency action for
37 specified purposes; amending s. 120.541, F.S.;

38 conforming a cross-reference; amending s. 120.542,
39 F.S.; removing a provision requiring the Governor and
40 Cabinet, sitting as the Administration Commission, to
41 adopt uniform rules of procedure for specified
42 actions; removing provisions requiring an agency to
43 provide certain notice of specified petitions to the
44 Department of State for publication; amending s.
45 120.569, F.S.; revising the proceedings to which
46 substantial interest provisions apply; revising
47 requirements for a notice of agency action and
48 enforcement action; requiring a party to request an
49 administrative hearing within a certain period;
50 requiring such requests to include specified

51 information; requiring an agency to make certain
52 determinations and grant or deny a request for a
53 hearing within a certain period; requiring written
54 notice to certain parties of such approval or denial;
55 authorizing an agency to refer a petition to the
56 Division of Administrative Hearings for assignment of
57 an administrative law judge within a certain period;
58 providing that failure to timely request such
59 assignment constitutes the agency's acceptance of
60 certain statements of fact and factual allegations;
61 requiring the division to issue and serve an initial
62 order that includes specified information; requiring
63 parties served with such order to respond within a
64 certain period with specified information; revising
65 procedures for hearings; preserving legislative and
66 judicial privileges and immunities in administrative
67 hearings; revising requirements for the
68 disqualification of an administrative law judge;
69 revising evidentiary requirements for certain
70 proceedings; requiring certain notification to parties
71 to a proceeding; removing a provision requiring an
72 initial scheduling order; creating s. 120.5695, F.S.;
73 providing exclusive authority and procedures for
74 conducting discovery in an administrative proceeding;
75 providing for specified mandatory initial disclosures;

76 providing disclosure requirements for a party granted
77 leave to intervene in a proceeding; authorizing the
78 presiding officer to impose sanctions for failure to
79 make such disclosures; authorizing the presiding
80 officer to direct the parties to engage in a
81 prehearing conference; requiring the presiding officer
82 to enter an initial discovery order; requiring the
83 adoption of uniform rules of discovery; authorizing
84 the award of costs and attorney fees to a prevailing
85 party in certain circumstances; requiring a party to
86 supplement certain information; amending s. 120.57,
87 F.S.; revising procedures for a hearing involving a
88 disputed issue of material fact; authorizing the
89 presiding officer to allow the general public to
90 present communications in specified circumstances;
91 revising certain evidentiary requirements; authorizing
92 an agency to interpret, modify, or reject rulings on
93 evidence for certain purposes; providing for stay of
94 certain proceedings upon timely filing of written
95 protest; conforming provisions to changes made by the
96 act; amending s. 120.574, F.S.; conforming provisions
97 to changes made by the act; creating s. 120.576, F.S.;
98 requiring the filing of certain administrative
99 settlements with the Administrative Procedures
100 Committee; amending s. 120.595, F.S.; conforming a

101 cross-reference; amending s. 120.60, F.S.; requiring a
 102 licensee to maintain a correct physical address with
 103 the licensing agency; removing a provision requiring
 104 an agency to publish a notice in a newspaper under
 105 certain circumstances; creating s. 120.64, F.S.;
 106 authorizing an agency head to designate and terminate
 107 an agency hearing officer; providing minimum
 108 qualifications for such officers; amending s. 120.68,
 109 F.S.; requiring a notice of appeal to be filed with an
 110 agency to initiate proceedings for judicial review of
 111 final agency action; amending ss. 120.80, 120.81,
 112 349.04, 373.4271, 374.983, 380.05, 409.2564, 409.285,
 113 409.908, 409.913, 443.151, 455.211, 456.012, 456.073,
 114 472.008, 496.419, 497.157, 501.608, 552.40, 628.461,
 115 628.4615, 633.228, 760.11, 766.207, 893.0355, 1002.33,
 116 and 1013.30, F.S.; conforming provisions to changes
 117 made by the act; conforming cross-references;
 118 providing an effective date.

119
 120 Be It Enacted by the Legislature of the State of Florida:
 121
 122 Section 1. Paragraphs (j), (r), and (w) of subsection (2)
 123 of section 110.205, Florida Statutes, are amended to read:
 124 110.205 Career service; exemptions.—
 125 (2) EXEMPT POSITIONS.—The exempt positions that are not

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

126 covered by this part include the following:

127 (j) The appointed secretaries and the State Surgeon
128 General, assistant secretaries, deputy secretaries, and deputy
129 assistant secretaries of all departments; the executive
130 directors, assistant executive directors, deputy executive
131 directors, and deputy assistant executive directors of all
132 departments; attorneys who serve exclusively as administrative
133 law judges pursuant to s. 120.65; individuals who serve
134 exclusively as agency hearing officers in hearings conducted
135 pursuant to s. 120.57; the directors of all divisions and those
136 positions determined by the department to have managerial
137 responsibilities comparable to such positions, which positions
138 include, but are not limited to, program directors, assistant
139 program directors, district administrators, deputy district
140 administrators, the Director of Central Operations Services of
141 the Department of Children and Families, the State
142 Transportation Development Administrator, the State Public
143 Transportation and Modal Administrator, district secretaries,
144 district directors of transportation development, transportation
145 operations, transportation support, and the managers of the
146 offices of the Department of Transportation specified in s.
147 20.23(3)(b). Unless otherwise fixed by law, the department shall
148 set the salary and benefits of these positions and the positions
149 of county health department directors and county health
150 department administrators of the Department of Health in

151 accordance with the rules of the Senior Management Service.

152 (r) All positions not otherwise exempt under this
153 subsection which require as a prerequisite to employment:
154 licensure as a physician pursuant to chapter 458, licensure as
155 an osteopathic physician pursuant to chapter 459, licensure as a
156 chiropractic physician pursuant to chapter 460, including those
157 positions which are occupied by employees who are exempted from
158 licensure pursuant to s. 409.352; licensure as an engineer
159 pursuant to chapter 471, which are supervisory positions; or for
160 12 calendar months, which require as a prerequisite to
161 employment that the employee have received the degree of
162 Bachelor of Laws or Juris Doctor from a law school accredited by
163 the American Bar Association and thereafter membership in The
164 Florida Bar, ~~except for any attorney who serves as an~~
165 ~~administrative law judge pursuant to s. 120.65 or for hearings~~
166 ~~conducted pursuant to s. 120.57(1)(a)~~. Unless otherwise fixed by
167 law, the department shall set the salary and benefits for these
168 positions in accordance with the rules established for the
169 Selected Exempt Service.

170 (w) Managerial employees, as defined in s. 447.203(4),
171 confidential employees, as defined in s. 447.203(5), and
172 supervisory employees who spend the majority of their time
173 communicating with, motivating, training, and evaluating
174 employees, and planning and directing employees' work, and who
175 have the authority to hire, transfer, suspend, lay off, recall,

176 promote, discharge, assign, reward, or discipline subordinate
177 employees or effectively recommend such action, including all
178 employees serving as supervisors, administrators, and directors.
179 Excluded are employees also designated as special risk or
180 special risk administrative support ~~and attorneys who serve as~~
181 ~~administrative law judges pursuant to s. 120.65 or for hearings~~
182 ~~conducted pursuant to s. 120.57(1)(a)~~. Additionally, registered
183 nurses licensed under chapter 464, dentists licensed under
184 chapter 466, psychologists licensed under chapter 490 or chapter
185 491, nutritionists or dietitians licensed under part X of
186 chapter 468, pharmacists licensed under chapter 465,
187 psychological specialists licensed under chapter 491, physical
188 therapists licensed under chapter 486, and speech therapists
189 licensed under part I of chapter 468 are excluded, unless
190 otherwise collectively bargained.

191 Section 2. Subsections (2), (21), and (22) of section
192 120.52, Florida Statutes, are amended, and subsections (23) and
193 (24) are added to that section, to read:

194 120.52 Definitions.—As used in this act:

195 (2) "Agency action" means the whole or part of a rule or
196 order, or the equivalent, or the denial of a petition to adopt a
197 rule or issue an order. The term also includes any denial of a
198 request made under s. 120.54(6) ~~120.54(7)~~.

199 (21) "Variance" means a decision by an agency to grant a
200 modification to all or part of the literal requirements of an

201 agency rule to a person who is subject to the rule. Any variance
202 shall conform to the standards for variances outlined in this
203 chapter and in the uniform rules adopted pursuant to s. 120.5401
204 ~~120.54(5)~~.

205 (22) "Waiver" means a decision by an agency not to apply
206 all or part of a rule to a person who is subject to the rule.
207 Any waiver shall conform to the standards for waivers outlined
208 in this chapter and in the uniform rules adopted pursuant to s.
209 120.5401 ~~120.54(5)~~.

210 (23) "Telecommunications" means the science and technology
211 of communication at a distance, including electronic systems
212 used in the transmission or reception of information.

213 (24) "Enforcement action" means a penal or licensure
214 disciplinary action or proceeding.

215 Section 3. Section 120.521, Florida Statutes, is created
216 to read:

217 120.521 Representation in agency proceedings.—Parties
218 appearing in an agency proceeding may represent themselves or
219 choose to be represented at their own expense by counsel or a
220 qualified representative. An entity other than an individual
221 natural person, such as a corporation or partnership, may be
222 represented by an officer, director, general partner, managing
223 member, agent, or other person authorized by law to enter into
224 binding agreements on behalf of the entity.

225 (1) "Counsel" means a member of The Florida Bar who is not

226 under any order of suspension, disbarment, or resignation in
227 lieu of discipline by the Supreme Court of this state.

228 (2) (a) A party seeking representation by a qualified
229 representative shall file a written notice with the presiding
230 officer containing the following information:

231 1. The name, mailing address, physical address, telephone
232 number, and electronic mail address of the individual proposed
233 to serve as a qualified representative.

234 2. A statement of the specific criteria under paragraph
235 (3) (a) or paragraph (3) (b) that qualifies the individual to
236 represent the requesting party in the agency proceeding.

237 3. A statement that the requesting party is aware that it
238 may be represented by counsel but has chosen to be represented
239 by a qualified representative.

240 4. The signature of the requesting party.

241 (b) The party seeking representation shall attach to the
242 notice the affidavit required by paragraph (3) (a) or the
243 affidavit required by paragraph (3) (b) executed by the
244 individual proposed to serve as a qualified representative.

245 1. If the party seeking representation files the affidavit
246 required by paragraph (3) (a), within 5 days after the filing the
247 presiding officer shall enter and serve an order approving or
248 denying the individual as a qualified representative. Such order
249 is not reviewable under s. 120.569, s. 120.57, s. 120.68, or s.
250 120.69.

251 2. If the party seeking representation files the affidavit
 252 required by paragraph (3)(b), the individual shall be accepted
 253 as a qualified representative without further notice or hearing.

254 (3) An individual may not represent a party as a qualified
 255 representative under this section unless such individual meets
 256 the criteria in paragraph (a) or paragraph (b) and is not
 257 disqualified under paragraph (c).

258 (a) For each matter in which a party seeks representation
 259 by a qualified representative under this paragraph, the
 260 individual proposed to serve as the qualified representative
 261 shall execute and file with the presiding officer an affidavit
 262 attesting that such individual:

263 1. Has read and is familiar with this chapter;

264 2. Has read and is familiar with the substantive laws
 265 pertaining to the proceeding in which the party seeks
 266 representation;

267 3. Has read and is familiar with the substantive laws
 268 pertaining to the jurisdiction of each agency that is a party to
 269 the proceeding;

270 4. Has read and is familiar with chapter 90, the Florida
 271 Evidence Code, and chapter 92;

272 5. Has read and is familiar with the Standards of Conduct
 273 for Qualified Representatives provided in subsection (4) and
 274 understands that failure to comply with such standards may
 275 result in the presiding officer disqualifying the individual and

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276 removing the individual from further representation in the
277 proceeding;

278 6. Has read and is familiar with the uniform rules of
279 procedure adopted by the Administration Commission under s.
280 120.5401, including the rules of discovery in administrative
281 proceedings;

282 7. Has full knowledge of and familiarity with the factual
283 and legal issues pertaining to the proceeding in which the
284 representation is sought; and

285 8. Is not subject to disqualification under paragraph
286 (3) (c); or

287 (b) For each matter in which a party seeks representation
288 by a qualified representative under this paragraph, the
289 individual proposed to serve as the qualified representative
290 shall execute and file with the presiding officer an affidavit
291 affirming such individual's familiarity with the material
292 included in subparagraphs (a)1.-(a)7., that such individual is
293 not subject to disqualification under paragraph (3) (c), and that
294 such individual:

295 1. Is an attorney admitted to practice in one of the
296 jurisdictions within the territory of the United States and is
297 not under any order of suspension, disbarment, or resignation in
298 lieu of discipline by any jurisdiction;

299 2. Is a law student who:

300 a. Is duly enrolled in a law school located in the

301 territory of the United States and is appearing as part of a
302 student practice program authorized by such law school;

303 b. Has completed the equivalent of 48 semester hours of
304 legal studies;

305 c. Is certified by the dean of such law school as having
306 good character, competent legal ability, and adequate training
307 to perform as a legal intern in a law school student practice
308 program; and

309 d. Is supervised by an attorney admitted to and in good
310 standing with The Florida Bar. The affidavit shall include the
311 name, Florida Bar number, mailing address, physical address,
312 telephone number, and electronic mail address of the attorney;

313 3. Previously appeared as a qualified representative in a
314 proceeding conducted by the division. The affidavit shall list
315 up to 20 of the most recent division proceedings in which the
316 individual appeared as a qualified representative, including the
317 name, division docket number, and party represented in each
318 proceeding; or

319 4. Previously appeared as a qualified representative in a
320 matter conducted by an agency that is a party to the proceeding.
321 The affidavit shall list up to 20 of the most recent agency
322 proceedings in which the individual appeared as a qualified
323 representative, including the name, agency case number, and
324 party represented in each proceeding.

325 (c) An individual may not appear as a qualified

326 representative in a proceeding if:

327 1. The individual provided any false information under

328 paragraph (a) or paragraph (b);

329 2. The individual's ability to practice law under

330 subparagraph (b)1. is under any order of suspension, disbarment,

331 or resignation in lieu of discipline by any jurisdiction;

332 3. The individual ceases to be a law student who meets the

333 requirements of subparagraph (b)2.; or

334 4. The presiding officer of a proceeding finds that the

335 individual failed to comply with any of the requirements of this

336 section. Upon making such a finding, the presiding officer shall

337 enter the finding as an order in the record and shall disqualify

338 the individual from further representation in the proceeding.

339 (4) The following Standards of Conduct for Qualified

340 Representatives are mandatory for all qualified representatives:

341 (a) A representative must exercise due diligence to ensure

342 that any motion or pleading is filed and argued in good faith.

343 (b) A representative must advise his or her client to obey

344 the law.

345 (c) A representative may not:

346 1. Engage in conduct involving dishonesty, fraud, deceit,

347 or misrepresentation;

348 2. Engage in conduct that is prejudicial to the

349 administration of justice;

350 3. Handle a matter that the representative knows or should

351 have known he or she is not competent to handle;

352 4. Handle a legal or factual matter without adequate
 353 preparation;

354 5. Communicate, or cause another to communicate, as to the
 355 merits of the proceeding with the presiding officer except on
 356 the record or in writing with a copy of such writing promptly
 357 delivered to the opposing party; or

358 6. Communicate with an adverse party regarding matters at
 359 issue in the administrative proceeding when he or she knows or
 360 should have known that the adverse party is represented by
 361 counsel or another qualified representative.

362
 363 A presiding officer may disqualify a representative appearing in
 364 an administrative proceeding for failure to comply with the
 365 standards provided in this subsection.

366 Section 4. Subsection (1) of section 120.525, Florida
 367 Statutes, is amended, and subsection (4) is added to that
 368 section, to read:

369 120.525 Meetings, hearings, and workshops.—

370 (1) Except in the case of emergency meetings, each agency
 371 shall give notice of public meetings, hearings, and workshops by
 372 publication in the Florida Administrative Register and on the
 373 agency's website not fewer ~~less~~ than 7 days before the event.

374 The notice shall include a statement of the general subject
 375 matter to be considered, the manner in which an interested party

376 may submit material relevant to the purposes identified in such
377 notice, the method by which a member of the public may request
378 an opportunity to speak, and a statement that a speaker may be
379 subject to reasonable time limits.

380 (4) Except as provided in subsection (3), the following
381 applies to all public meetings, hearings, and workshops
382 conducted under this chapter:

383 (a) In addition to the requirements of subsection (1), the
384 notice for a public meeting, hearing, or workshop utilizing
385 telecommunications must state whether the public meeting,
386 hearing, or workshop will be conducted or may be attended by
387 means of telecommunications and must include:

388 1. All information necessary for contemporaneous public
389 access to the public meeting, hearing, or workshop. If
390 contemporaneous public access is provided by direct
391 telecommunications link, the notice must include the manner in
392 which each member of the public may access such link. If
393 contemporaneous public access is provided solely through the use
394 of limited public telecommunications access points that require
395 members of the public to be physically present at specified
396 locations in order for such members to access the meeting,
397 hearing, or workshop, the notice must include the physical
398 location of each telecommunications access point.

399 2. The manner in which an interested party may submit
400 material relevant to the purposes identified in the notice

401 before, during, and after the public meeting, hearing, or
402 workshop.

403 3. The manner in which a member of the public attending a
404 public meeting, hearing, or workshop by means of
405 telecommunications may request to speak at such public meeting,
406 hearing, or workshop, including the manner in which such
407 member's sufficient interest in the purposes identified in the
408 notice will be verified and the manner in which multiple
409 interested parties may designate one representative to speak on
410 their behalf.

411 (b) The agency head shall designate a presiding officer to
412 conduct the public meeting, hearing, or workshop. For public
413 hearings, the presiding officer must be the administrative law
414 judge, agency hearing officer, mediator, or other person
415 designated by the agency head in accordance with the law under
416 which the hearing is conducted. The presiding officer shall have
417 all authority necessary to control the conduct of the meeting,
418 hearing, or workshop.

419 (c) Except as otherwise provided by law, all evidence,
420 testimony, and argument presented at a public meeting, hearing,
421 or workshop must be afforded equal consideration by the agency
422 conducting the public meeting, hearing, or workshop regardless
423 of the method of communication.

424 (d) Nothing in this subsection shall be construed to
425 diminish the right to inspect public records under chapter 119.

426 (e) If points of access to a public meeting, hearing, or
427 workshop that is subject to the provisions of s. 286.011 are
428 limited to places not normally open to the public, any official
429 action taken at such meeting, hearing, or workshop is void and
430 of no effect.

431 (f) Other laws relating to public meetings, hearings, and
432 workshops, including penal and remedial provisions, apply to
433 public meetings, hearings, and workshops conducted by means of
434 telecommunications.

435 (g) The uniform rules of procedure may not contradict the
436 requirements of this subsection.

437 Section 5. Subsection (5) of section 120.54, Florida
438 Statutes, is amended to read:

439 120.54 Rulemaking.—

440 ~~(5) UNIFORM RULES.—~~

441 ~~(a)1. By July 1, 1997, the Administration Commission shall~~
442 ~~adopt one or more sets of uniform rules of procedure which shall~~
443 ~~be reviewed by the committee and filed with the Department of~~
444 ~~State. Agencies must comply with the uniform rules by July 1,~~
445 ~~1998. The uniform rules shall establish procedures that comply~~
446 ~~with the requirements of this chapter. On filing with the~~
447 ~~department, the uniform rules shall be the rules of procedure~~
448 ~~for each agency subject to this chapter unless the~~
449 ~~Administration Commission grants an exception to the agency~~
450 ~~under this subsection.~~

451 ~~2. An agency may seek exceptions to the uniform rules of~~
452 ~~procedure by filing a petition with the Administration~~
453 ~~Commission. The Administration Commission shall approve~~
454 ~~exceptions to the extent necessary to implement other statutes,~~
455 ~~to the extent necessary to conform to any requirement imposed as~~
456 ~~a condition precedent to receipt of federal funds or to permit~~
457 ~~persons in this state to receive tax benefits under federal law,~~
458 ~~or as required for the most efficient operation of the agency as~~
459 ~~determined by the Administration Commission. The reasons for the~~
460 ~~exceptions shall be published in the Florida Administrative~~
461 ~~Register.~~

462 ~~3. Agency rules that provide exceptions to the uniform~~
463 ~~rules shall not be filed with the department unless the~~
464 ~~Administration Commission has approved the exceptions. Each~~
465 ~~agency that adopts rules that provide exceptions to the uniform~~
466 ~~rules shall publish a separate chapter in the Florida~~
467 ~~Administrative Code that delineates clearly the provisions of~~
468 ~~the agency's rules that provide exceptions to the uniform rules~~
469 ~~and specifies each alternative chosen from among those~~
470 ~~authorized by the uniform rules. Each chapter shall be organized~~
471 ~~in the same manner as the uniform rules.~~

472 ~~(b) The uniform rules of procedure adopted by the~~
473 ~~commission pursuant to this subsection shall include, but are~~
474 ~~not limited to:~~

475 ~~1. Uniform rules for the scheduling of public meetings,~~

476 ~~hearings, and workshops.~~

477 ~~2. Uniform rules for use by each state agency that provide~~
478 ~~procedures for conducting public meetings, hearings, and~~
479 ~~workshops, and for taking evidence, testimony, and argument at~~
480 ~~such public meetings, hearings, and workshops, in person and by~~
481 ~~means of communications media technology. The rules shall~~
482 ~~provide that all evidence, testimony, and argument presented~~
483 ~~shall be afforded equal consideration, regardless of the method~~
484 ~~of communication. If a public meeting, hearing, or workshop is~~
485 ~~to be conducted by means of communications media technology, or~~
486 ~~if attendance may be provided by such means, the notice shall so~~
487 ~~state. The notice for public meetings, hearings, and workshops~~
488 ~~utilizing communications media technology shall state how~~
489 ~~persons interested in attending may do so and shall name~~
490 ~~locations, if any, where communications media technology~~
491 ~~facilities will be available. Nothing in this paragraph shall be~~
492 ~~construed to diminish the right to inspect public records under~~
493 ~~chapter 119. Limiting points of access to public meetings,~~
494 ~~hearings, and workshops subject to the provisions of s. 286.011~~
495 ~~to places not normally open to the public shall be presumed to~~
496 ~~violate the right of access of the public, and any official~~
497 ~~action taken under such circumstances is void and of no effect.~~
498 ~~Other laws relating to public meetings, hearings, and workshops,~~
499 ~~including penal and remedial provisions, shall apply to public~~
500 ~~meetings, hearings, and workshops conducted by means of~~

501 ~~communications media technology, and shall be liberally~~
502 ~~construed in their application to such public meetings,~~
503 ~~hearings, and workshops. As used in this subparagraph,~~
504 ~~"communications media technology" means the electronic~~
505 ~~transmission of printed matter, audio, full-motion video,~~
506 ~~freeze-frame video, compressed video, and digital video by any~~
507 ~~method available.~~

508 ~~3. Uniform rules of procedure for the filing of notice of~~
509 ~~protests and formal written protests. The Administration~~
510 ~~Commission may prescribe the form and substantive provisions of~~
511 ~~a required bond.~~

512 ~~4. Uniform rules of procedure for the filing of petitions~~
513 ~~for administrative hearings pursuant to s. 120.569 or s. 120.57.~~
514 ~~Such rules shall require the petition to include:~~

515 ~~a. The identification of the petitioner, including the~~
516 ~~petitioner's e-mail address, if any, for the transmittal of~~
517 ~~subsequent documents by electronic means.~~

518 ~~b. A statement of when and how the petitioner received~~
519 ~~notice of the agency's action or proposed action.~~

520 ~~c. An explanation of how the petitioner's substantial~~
521 ~~interests are or will be affected by the action or proposed~~
522 ~~action.~~

523 ~~d. A statement of all material facts disputed by the~~
524 ~~petitioner or a statement that there are no disputed facts.~~

525 ~~e. A statement of the ultimate facts alleged, including a~~

526 ~~statement of the specific facts the petitioner contends warrant~~
527 ~~reversal or modification of the agency's proposed action.~~

528 ~~f. A statement of the specific rules or statutes that the~~
529 ~~petitioner contends require reversal or modification of the~~
530 ~~agency's proposed action, including an explanation of how the~~
531 ~~alleged facts relate to the specific rules or statutes.~~

532 ~~g. A statement of the relief sought by the petitioner,~~
533 ~~stating precisely the action petitioner wishes the agency to~~
534 ~~take with respect to the proposed action.~~

535 ~~5. Uniform rules for the filing of request for~~
536 ~~administrative hearing by a respondent in agency enforcement and~~
537 ~~disciplinary actions. Such rules shall require a request to~~
538 ~~include:~~

539 ~~a. The name, address, e-mail address, and telephone number~~
540 ~~of the party making the request and the name, address, and~~
541 ~~telephone number of the party's counsel or qualified~~
542 ~~representative upon whom service of pleadings and other papers~~
543 ~~shall be made;~~

544 ~~b. A statement that the respondent is requesting an~~
545 ~~administrative hearing and disputes the material facts alleged~~
546 ~~by the petitioner, in which case the respondent shall identify~~
547 ~~those material facts that are in dispute, or that the respondent~~
548 ~~is requesting an administrative hearing and does not dispute the~~
549 ~~material facts alleged by the petitioner; and~~

550 ~~e. A reference by file number to the administrative~~

551 ~~complaint that the party has received from the agency and the~~
552 ~~date on which the agency pleading was received.~~

553
554 ~~The agency may provide an election-of-rights form for the~~
555 ~~respondent's use in requesting a hearing, so long as any form~~
556 ~~provided by the agency calls for the information in sub-~~
557 ~~subparagraphs a. through c. and does not impose any additional~~
558 ~~requirements on a respondent in order to request a hearing,~~
559 ~~unless such requirements are specifically authorized by law.~~

560 ~~6. Uniform rules of procedure for the filing and prompt~~
561 ~~disposition of petitions for declaratory statements. The rules~~
562 ~~shall also describe the contents of the notices that must be~~
563 ~~published in the Florida Administrative Register under s.~~
564 ~~120.565, including any applicable time limit for the filing of~~
565 ~~petitions to intervene or petitions for administrative hearing~~
566 ~~by persons whose substantial interests may be affected.~~

567 ~~7. Provision of a method by which each agency head shall~~
568 ~~provide a description of the agency's organization and general~~
569 ~~course of its operations. The rules shall require that the~~
570 ~~statement concerning the agency's organization and operations be~~
571 ~~published on the agency's website.~~

572 ~~8. Uniform rules establishing procedures for granting or~~
573 ~~denying petitions for variances and waivers pursuant to s.~~
574 ~~120.542.~~

575 ~~Section 6. Section 120.5401, Florida Statutes, is created~~

576 to read:

577 120.5401 Uniform rules of procedure.—Subject to subsection
578 (1), agencies subject to this chapter shall use the uniform
579 rules of procedure adopted pursuant to this section.

580 (1) The Administration Commission shall adopt uniform
581 rules of procedure. The uniform rules shall establish procedures
582 that comply with the requirements of this chapter. On becoming
583 effective, the uniform rules shall be the rules of procedure for
584 each agency subject to this chapter unless the Administration
585 Commission grants an exception to the agency under this
586 subsection.

587 (a) An agency may seek exceptions to the uniform rules of
588 procedure by filing a petition with the Administration
589 Commission. The Administration Commission shall approve
590 exceptions to the extent necessary to implement other laws, to
591 the extent necessary to conform to any requirement imposed as a
592 condition precedent to receipt of federal funds or to permit
593 persons in this state to receive tax benefits under federal law,
594 or as required for the most efficient operation of the agency as
595 determined by the Administration Commission. The reasons for the
596 exceptions shall be published in the Florida Administrative
597 Register.

598 (b) Agency rules that provide exceptions to the uniform
599 rules shall not be filed with the department unless the
600 Administration Commission has approved the exceptions. Each

601 agency that adopts rules that provide exceptions to the uniform
602 rules shall publish a separate chapter in the Florida
603 Administrative Code that clearly delineates the provisions of
604 the agency's rules that provide exceptions to the uniform rules
605 and specifies each alternative chosen from among those
606 authorized by the uniform rules. Each chapter shall be organized
607 in the same manner as the uniform rules.

608 (2) The uniform rules of procedure adopted by the
609 Administration Commission pursuant to this section shall be used
610 by each state agency and shall include, but are not limited to:

611 (a) Uniform rules of procedure for the scheduling of
612 public meetings, hearings, and workshops.

613 (b) Uniform rules that provide procedures for conducting
614 public meetings, hearings, and workshops, and for taking
615 evidence, testimony, and argument at such public meetings,
616 hearings, and workshops, in person and by means of
617 telecommunications.

618 (c) Uniform rules of procedure for the filing of notice of
619 protests and formal written protests pursuant to s. 120.57(3).
620 The Administration Commission may prescribe the form and
621 substantive provisions of a required bond.

622 (d) Uniform rules of procedure for the filing of petitions
623 and requests for administrative hearings pursuant to s. 120.569.

624 (e) Uniform rules of procedure for the conduct and
625 disposition of administrative hearings, including the form and

626 filing of other pleadings and of motions, notices, documents,
627 and exhibits; the prompt disposition of motions and other
628 matters; and the recordation and preservation of the record.

629 (f) Uniform rules of procedure for the filing and prompt
630 disposition of petitions for declaratory statements. The rules
631 shall also describe the contents of the notices that must be
632 published in the Florida Administrative Register under s.
633 120.565, including any applicable time limit for the filing of
634 motions to intervene or petitions for administrative hearing by
635 persons whose substantial interests may be affected.

636 (g) Uniform rules of procedure for the granting or denying
637 of petitions for variances and waivers pursuant to s. 120.542.
638 The uniform rules shall include procedures for the granting,
639 denying, or revoking of emergency and temporary variances and
640 waivers. The uniform rules may provide for expedited timeframes,
641 waiver of or limitations on public notice, and limitations on
642 comments on the petition in the case of temporary or emergency
643 variances or waivers.

644 Section 7. Section 120.5402, Florida Statutes, is created
645 to read:

646 120.5402 Mandatory correction of rule.—

647 (1) For purposes of this section:

648 (a) "Department" means the Department of State.

649 (b) "Mandatory correction" means a change in the text,
650 numbering, reference to rulemaking authority, or reference to

651 law implemented of a rule that does not modify the substance or
652 legal effect of the rule and is necessitated by a change in the
653 wording of a law.

654 (2) For purposes of this section, only a law enacted
655 subsequent to the effective date of the rule may necessitate a
656 mandatory correction of the rule.

657 (3) No later than 180 days after the effective date of a
658 law necessitating a mandatory correction of a rule, the agency
659 that adopted the affected rule shall publish a notice of
660 mandatory correction of rule in the Florida Administrative
661 Register pursuant to s. 120.55. The notice shall include:

662 (a) The full text of the affected rule.

663 (b) The proposed mandatory correction.

664 (c) The certification of the agency general counsel that
665 the change in the rule is a mandatory correction and the
666 justification for that conclusion.

667 (d) The procedure for a substantially interested party to
668 file an objection to the proposed mandatory correction within 21
669 days after the date of the notice.

670 (e) A statement that the agency head approved the filing
671 of the notice.

672 (4) If a notice required in subsection (3) is not
673 published within 180 days after the effective date of the law
674 necessitating the mandatory correction, the operation of the
675 affected rule is suspended until publication of such notice.

676 (5) If an objection to the proposed mandatory correction
677 is not received within the 21-day period, the agency shall
678 publish a notice in the Florida Administrative Register stating
679 that no timely objections were received and the mandatory
680 correction of the rule is complete as of the date the notice of
681 no timely objection is published. The department shall update
682 the text of the rule and accompanying historical notes to
683 incorporate the mandatory correction.

684 (6) Within 10 days after receiving a timely objection
685 filed by a substantially interested party to the proposed
686 mandatory correction, the agency shall determine whether to
687 grant or deny the objection.

688 (a) If the objection is granted, the agency shall publish
689 a notice in the Florida Administrative Register withdrawing the
690 proposed mandatory correction and stating that the agency will
691 proceed with rulemaking under s. 120.54 within 20 days after the
692 date the objection is received.

693 (b) If the objection is denied, the agency shall serve a
694 written copy of the denial on the objecting party and publish
695 notice of the denial in the Florida Administrative Register. The
696 mandatory correction shall become effective 10 days after
697 publication of the notice of denial. The department shall
698 publish notice in the Florida Administrative Register of the
699 date the mandatory correction became effective and shall update
700 the text of the rule and accompanying historical notes to

701 incorporate the mandatory correction.

702 (7) A mandatory correction and the denial of an objection
703 under this section do not constitute final agency action for
704 purposes of s. 120.569, s. 120.57, or s. 120.68.

705 Section 8. Paragraph (a) of subsection (4) of section
706 120.541, Florida Statutes, is amended to read:

707 120.541 Statement of estimated regulatory costs.—

708 (4) Subsection (3) does not apply to the adoption of:

709 (a) Federal standards pursuant to s. 120.54(5) ~~120.54(6)~~.

710 Section 9. Section 120.542, Florida Statutes, is amended
711 to read:

712 120.542 Variances and waivers.—

713 (1) Strict application of uniformly applicable rule
714 requirements can lead to unreasonable, unfair, and unintended
715 results in particular instances. The Legislature finds that it
716 is appropriate in such cases to adopt a procedure for agencies
717 to provide relief to persons subject to regulation. A public
718 employee is not a person subject to regulation under s. 120.5401
719 and this section for the purpose of petitioning for a variance
720 or waiver to a rule that affects that public employee in his or
721 her capacity as a public employee. Agencies are authorized to
722 grant variances and waivers to requirements of their rules
723 consistent with this section and with rules adopted under the
724 authority of this section. An agency may limit the duration of
725 any grant of a variance or waiver or otherwise impose conditions

726 on the grant only to the extent necessary for the purpose of the
727 underlying statute to be achieved. This section does not
728 authorize agencies to grant variances or waivers to statutes or
729 to rules required by the Federal Government for the agency's
730 implementation or retention of any federally approved or
731 delegated program, except as allowed by the program or when the
732 variance or waiver is also approved by the appropriate agency of
733 the Federal Government. This section is supplemental to, and
734 does not abrogate, the variance and waiver provisions in any
735 other statute.

736 (2) Variances and waivers shall be granted when the person
737 subject to the rule demonstrates that the purpose of the
738 underlying statute will be or has been achieved by other means
739 by the person and when application of a rule would create a
740 substantial hardship or would violate principles of fairness.
741 For purposes of this section, "substantial hardship" means a
742 demonstrated economic, technological, legal, or other type of
743 hardship to the person requesting the variance or waiver. For
744 purposes of this section, "principles of fairness" are violated
745 when the literal application of a rule affects a particular
746 person in a manner significantly different from the way it
747 affects other similarly situated persons who are subject to the
748 rule.

749 (3) ~~The Governor and Cabinet, sitting as the~~
750 ~~Administration Commission, shall adopt uniform rules of~~

751 ~~procedure pursuant to the requirements of s. 120.54(5)~~
752 ~~establishing procedures for granting or denying petitions for~~
753 ~~variances and waivers. The uniform rules shall include~~
754 ~~procedures for the granting, denying, or revoking of emergency~~
755 ~~and temporary variances and waivers. Such provisions may provide~~
756 ~~for expedited timeframes, waiver of or limited public notice,~~
757 ~~and limitations on comments on the petition in the case of such~~
758 ~~temporary or emergency variances and waivers.~~

759 ~~(4)~~ Agencies shall advise persons of the remedies
760 available through this section and shall provide copies of this
761 section, the uniform rules on variances and waivers, and, if
762 requested, the underlying statute, to persons who inquire about
763 the possibility of relief from rule requirements.

764 ~~(4)~~(5) A person who is subject to regulation by an agency
765 rule may file a petition with that agency, with a copy to the
766 committee, requesting a variance or waiver from the agency's
767 rule. In addition to any requirements mandated by the uniform
768 rules, each petition shall specify:

769 (a) The rule from which a variance or waiver is requested.

770 (b) The type of action requested.

771 (c) The specific facts that would justify a waiver or
772 variance for the petitioner.

773 (d) The reason why the variance or the waiver requested
774 would serve the purposes of the underlying statute.

775 ~~(5)~~(6) Within 15 days after receipt of a petition for

776 variance or waiver, an agency shall ~~provide notice of the~~
777 ~~petition to the Department of State, which shall~~ publish notice
778 of the petition in the ~~first available issue of the~~ Florida
779 Administrative Register. The notice shall contain the name of
780 the petitioner, the date the petition was filed, the rule number
781 and nature of the rule from which variance or waiver is sought,
782 and an explanation of how a copy of the petition can be
783 obtained. The uniform rules shall provide a means for interested
784 persons to provide comments on the petition.

785 (6)~~(7)~~ Except for requests for emergency variances or
786 waivers, within 30 days after receipt of a petition for a
787 variance or waiver, an agency shall review the petition and
788 request submittal of all additional information that the agency
789 is permitted by this section to require. Within 30 days after
790 receipt of such additional information, the agency shall review
791 it and may request only that information needed to clarify the
792 additional information or to answer new questions raised by or
793 directly related to the additional information. If the
794 petitioner asserts that any request for additional information
795 is not authorized by law or by rule of the affected agency, the
796 agency shall proceed, at the petitioner's written request, to
797 process the petition.

798 (7)~~(8)~~ An agency shall grant or deny a petition for
799 variance or waiver within 90 days after receipt of the original
800 petition, the last item of timely requested additional material,

801 or the petitioner's written request to finish processing the
802 petition, whichever occurs last. A petition not granted or
803 denied within 90 days after receipt of a completed petition is
804 deemed approved. A copy of the order granting or denying the
805 petition shall be filed with the committee and shall contain a
806 statement of the relevant facts and reasons supporting the
807 agency's action. The agency shall ~~provide notice of the~~
808 ~~disposition of the petition to the Department of State, which~~
809 ~~shall~~ publish the notice in the next available issue of the
810 Florida Administrative Register. The notice shall contain the
811 name of the petitioner, the date the petition was filed, the
812 rule number and nature of the rule from which the waiver or
813 variance is sought, a reference to the place and date of
814 publication of the notice of the petition, the date of the order
815 denying or approving the variance or waiver, the general basis
816 for the agency decision, and an explanation of how a copy of the
817 order can be obtained. The agency's decision to grant or deny
818 the petition shall be supported by competent substantial
819 evidence and is subject to ss. 120.569 and 120.57. Any
820 proceeding pursuant to ss. 120.569 and 120.57 in regard to a
821 variance or waiver shall be limited to the agency action on the
822 request for the variance or waiver, except that a proceeding in
823 regard to a variance or waiver may be consolidated with any
824 other proceeding authorized by this chapter.

825 (8)~~(9)~~ Each agency shall maintain a record of the type and

826 disposition of each petition, including temporary or emergency
 827 variances and waivers, filed pursuant to this section.

828 Section 10. Section 120.569, Florida Statutes, is amended
 829 to read:

830 120.569 Decisions which affect substantial interests.—

831 (1) GENERAL.—The provisions of this section apply in all
 832 proceedings in which the substantial interests of a party are
 833 determined by an agency action, unless the parties are
 834 proceeding by mediation or summary hearing as provided in this
 835 chapter under s. 120.573 or s. 120.574. ~~Unless waived by all~~
 836 ~~parties, s. 120.57(1) applies whenever the proceeding involves a~~
 837 ~~disputed issue of material fact. Unless otherwise agreed, s.~~
 838 ~~120.57(2) applies in all other cases. If a disputed issue of~~
 839 ~~material fact arises during a proceeding under s. 120.57(2),~~
 840 ~~then, unless waived by all parties, the proceeding under s.~~
 841 ~~120.57(2) shall be terminated and a proceeding under s.~~
 842 ~~120.57(1) shall be conducted. Parties shall be notified of any~~
 843 ~~order, including a final order. Unless waived, a copy of the~~
 844 ~~order shall be delivered or mailed to each party or the party's~~
 845 ~~attorney of record at the address of record.~~

846 (2) NOTIFICATION OF AGENCY ACTION.—

847 (a) The agency shall give reasonable notice to affected
 848 persons of the agency action, whether proposed or already taken,
 849 or of its decision to refuse action, together with a summary of
 850 the factual, legal, and policy grounds therefor. The notice

851 shall state clearly whether the matter is an enforcement action.

852 (b) Each notice shall inform the recipient of any
853 administrative hearing or judicial review that is available
854 under this section, s. 120.57, or s. 120.68; shall indicate the
855 procedure which must be followed to obtain the hearing or
856 judicial review; and shall state the time limits which apply. In
857 an enforcement action, the agency may provide an election-of-
858 rights form for the respondent's use in requesting a hearing,
859 but any form provided by the agency must require the information
860 in subparagraphs (3)(b)1., 3., 5., and 9., and may not impose
861 any additional requirements on a respondent in order to request
862 a hearing, unless such requirements are specifically authorized
863 by law.

864 (3) REQUEST FOR AN ADMINISTRATIVE HEARING.—

865 ~~(2)(a)~~ Except for any proceeding conducted as prescribed
866 in s. 120.56, a party seeking a hearing under this subsection
867 shall file a petition or request for a hearing under this
868 section shall be filed with the agency within 21 days after the
869 date the person receives written notice of the decision. Failure
870 to file a request within the 21-day period constitutes a waiver
871 of the right to hearing but does not constitute consent to the
872 agency action for purposes of judicial review under s. 120.68.
873 ~~If the agency requests an administrative law judge from the~~
874 ~~division, it shall so notify the division by electronic means~~
875 ~~through the division's website within 15 days after receipt of~~

876 ~~the petition or request.~~

877 (b) Any party's request for a hearing shall include the
878 following:

879 1. The name, address, electronic mail address, and
880 telephone number of the party and the name, address, and
881 telephone number of the party's counsel or qualified
882 representative upon whom service of pleadings and other papers
883 should be made.

884 2. A statement of when and how the party received notice
885 of the agency's action or proposed action.

886 3. If the matter is an enforcement action, the file number
887 contained in the complaint or other notice of agency action.

888 4. An explanation of how the party's substantial interests
889 are or will be affected by the action or proposed action.

890 5. A statement of all material facts disputed by the party
891 or a statement that there are no disputed facts.

892 6. A statement of the ultimate facts alleged, including a
893 statement of the specific facts the party contends warrant
894 reversal or modification of the agency's proposed action.

895 7. A statement of the specific rules or statutes that the
896 party contends require reversal or modification of the agency's
897 proposed action, including an explanation of how the alleged
898 facts relate to the specific rules or statutes.

899 8. A precise statement of the relief sought by the party,
900 including the action the agency should take with respect to the

901 matter.

902 9. A statement that the party is requesting an
903 administrative hearing.

904 (c) Upon receiving a request for a hearing, the agency
905 shall determine if the request contains all of the required
906 information. If it is not in substantial compliance with the
907 requirements of this subsection or is untimely filed, the
908 request shall be dismissed. The first dismissal of a request
909 shall be without prejudice for the requesting party to file a
910 timely amended request curing the defect, unless it is apparent
911 from the face of the request that the defect cannot be cured.

912 (d) Except in the case of an enforcement action, a request
913 for a hearing shall be granted or denied within 15 days after
914 receipt by the agency. In an enforcement action, a request for a
915 hearing shall be granted or denied within 30 days after receipt
916 by the agency. Failure to grant or deny a request for a hearing
917 within the time provided in this paragraph constitutes a
918 withdrawal of the agency action.

919 (e) The agency shall promptly give written notice to all
920 parties of the action taken on the request, stating with
921 particularity its reasons for denying the request if the request
922 is not granted, and stating the deadline for filing an amended
923 request, if applicable. This paragraph does not eliminate the
924 availability of equitable tolling as a defense to the untimely
925 filing of a request.

926 (4) AGENCY REQUEST FOR AN ADMINISTRATIVE LAW JUDGE.—

927 (a) The agency may refer a matter to the division for the
928 assignment of an administrative law judge only if the request
929 for a hearing is in substantial compliance with the requirements
930 of paragraph (3) (b).

931 (b) The agency shall request an administrative law judge
932 by promptly notifying the division by electronic means as
933 provided in the uniform rules.

934 1. The agency must request the assignment of an
935 administrative law judge within 15 days after the date of the
936 decision granting the request for a hearing unless the agency
937 and party requesting the hearing agree in writing to a different
938 date.

939 2. Failure to request the assignment of an administrative
940 law judge within 15 days after the date of the decision granting
941 the request for a hearing or by the date set in a written
942 agreement between the agency and the party requesting the
943 hearing constitutes the agency's adoption of the opposing
944 party's statement of facts and factual allegations as presented
945 by the petition for a hearing and the agency shall proceed
946 pursuant to s. 120.57(2).

947 (c) On the request of any agency, the division shall
948 assign an administrative law judge with due regard to the
949 expertise required for the particular matter.

950 (d) If a request for a hearing is granted and the agency

951 requests the assignment of an administrative law judge, the
952 referring agency shall take no further action with respect to a
953 proceeding under s. 120.57(1), except as a party litigant, as
954 long as the division has jurisdiction over the proceeding ~~under~~
955 ~~s. 120.57(1). Any party may request the disqualification of the~~
956 ~~administrative law judge by filing an affidavit with the~~
957 ~~division prior to the taking of evidence at a hearing, stating~~
958 ~~the grounds with particularity.~~

959 (e) Within 5 days, excluding Saturdays, Sundays, and state
960 holidays, after the division's receipt of a request for a
961 hearing, the division shall issue and serve on all original
962 parties an initial order that assigns the case to a specific
963 administrative law judge, provides general information regarding
964 practice and procedure before the division, and directs the
965 parties to respond within 5 days, excluding Saturdays, Sundays,
966 and state holidays, in writing with the following information:

967 1. The name and docket number of any related matters
968 involving any of the parties and any of the same or similar
969 issues that arose in the present matter, whether pending before
970 the division or another authority.

971 2. The county in which the final hearing shall be
972 conducted.

973 3. The estimated time necessary to conduct the final
974 hearing.

975 4. All dates on which the parties are available to conduct

976 the final hearing. In a proceeding under s. 120.56, the
977 available dates may be no later than 30 days after the date the
978 division received the petition. In a proceeding under s.
979 120.57(3), the available dates may be no later than 30 days
980 after the date the division received the formal written protest.
981 In all other proceedings, the available dates may be no earlier
982 than 30 days and no later than 90 days after the date of the
983 order.

984 5. Whether discovery under the uniform rules is necessary
985 in addition to the initial disclosures required by s. 120.5695.
986 The initial order shall also advise the parties that a summary
987 hearing is available upon the agreement of all parties under s.
988 120.574 and briefly describe the expedited time sequences,
989 limited discovery, and final order provisions of the summary
990 procedure.

991 (f) If the administrative law judge assigned to a hearing
992 becomes unavailable, the division shall assign another
993 administrative law judge who shall use the existing record
994 developed in the matter and receive any additional evidence or
995 argument which the new administrative law judge finds necessary.

996 (5) HEARING PROCEDURES.—

997 (a) Unless waived by all parties, s. 120.57(1) applies
998 whenever the proceeding involves a disputed issue of material
999 fact. If a disputed issue of material fact arises during a
1000 hearing that is not conducted under 120.57(1), unless waived by

1001 all parties, the proceeding shall be terminated and a proceeding
1002 under s. 120.57(1) shall be conducted.

1003 (b) All parties shall be afforded an opportunity for a
1004 hearing after reasonable notice of at least ~~not less than~~ 14
1005 days; however, the 14-day notice requirement may be waived with
1006 the consent of all parties. The notice shall include:

1007 1. A statement of the time, place, and nature of the
1008 hearing.

1009 2. A statement of the legal authority and jurisdiction
1010 under which the hearing is to be held.

1011 ~~(c) Unless otherwise provided by law, a petition or~~
1012 ~~request for hearing shall include those items required by the~~
1013 ~~uniform rules adopted pursuant to s. 120.54(5)(b). Upon the~~
1014 ~~receipt of a petition or request for hearing, the agency shall~~
1015 ~~carefully review the petition to determine if it contains all of~~
1016 ~~the required information. A petition shall be dismissed if it is~~
1017 ~~not in substantial compliance with these requirements or it has~~
1018 ~~been untimely filed. Dismissal of a petition shall, at least~~
1019 ~~once, be without prejudice to petitioner's filing a timely~~
1020 ~~amended petition curing the defect, unless it conclusively~~
1021 ~~appears from the face of the petition that the defect cannot be~~
1022 ~~cured. The agency shall promptly give written notice to all~~
1023 ~~parties of the action taken on the petition, shall state with~~
1024 ~~particularity its reasons if the petition is not granted, and~~
1025 ~~shall state the deadline for filing an amended petition if~~

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1026 ~~applicable. This paragraph does not eliminate the availability~~
1027 ~~of equitable tolling as a defense to the untimely filing of a~~
1028 ~~petition.~~

1029 ~~(d) The agency may refer a petition to the division for~~
1030 ~~the assignment of an administrative law judge only if the~~
1031 ~~petition is in substantial compliance with the requirements of~~
1032 ~~paragraph (c).~~

1033 ~~(e)~~ All pleadings, motions, or other papers filed in the
1034 proceeding must be signed by the party, the party's attorney, or
1035 the party's qualified representative. The signature constitutes
1036 a certificate that the person has read the pleading, motion, or
1037 other paper and that, based upon reasonable inquiry, it is not
1038 interposed for any improper purposes, such as to harass or to
1039 cause unnecessary delay, or for frivolous purpose or needless
1040 increase in the cost of litigation. If a pleading, motion, or
1041 other paper is signed in violation of these requirements, the
1042 presiding officer shall impose upon the person who signed it,
1043 the represented party, or both, an appropriate sanction, which
1044 may include an order to pay the other party or parties the
1045 amount of reasonable expenses incurred because of the filing of
1046 the pleading, motion, or other paper, including a reasonable
1047 attorney ~~attorney's~~ fee.

1048 (d) ~~(f)~~ The presiding officer has the power to swear
1049 witnesses and take their testimony under oath, to issue
1050 subpoenas, and to effect discovery as provided in this chapter

1051 ~~on the written request of any party by any means available to~~
1052 ~~the courts and in the manner provided in the Florida Rules of~~
1053 ~~Civil Procedure, including the imposition of sanctions, except~~
1054 ~~contempt.~~ However, for purposes of administrative hearings, all
1055 civil legislative and judicial privileges and immunities are
1056 expressly preserved ~~no presiding officer has the authority to~~
1057 ~~issue any subpoena or order directing discovery to any member or~~
1058 ~~employee of the Legislature when the subpoena or order commands~~
1059 ~~the production of documents or materials or compels testimony~~
1060 ~~relating to the legislative duties of the member or employee.~~
1061 ~~Any subpoena or order directing discovery directed to a member~~
1062 ~~or an employee of the Legislature shall show on its face that~~
1063 ~~the testimony sought does not relate to legislative duties.~~

1064 (e) Any party may request the disqualification of the
1065 administrative law judge by filing, before any evidence is taken
1066 at a hearing, an affidavit with the division that states with
1067 particularity the grounds for disqualification. The chief judge
1068 shall review the affidavit and the record as necessary and shall
1069 decide whether to disqualify the administrative law judge within
1070 5 days after the date the affidavit is filed. The chief judge
1071 shall enter a written order in the record stating whether the
1072 request is granted or denied. If the request is granted, the
1073 order shall include the assignment of the replacement
1074 administrative law judge.

1075 (f) 1. (g) Irrelevant, immaterial, Evidence that is not

1076 relevant to prove a material fact in issue or is unduly
1077 repetitious ~~evidence~~ shall be excluded, but all other evidence
1078 of a type commonly relied upon by reasonably prudent persons in
1079 the conduct of their affairs shall be admissible, whether or not
1080 such evidence would be admissible in a trial in the courts of
1081 Florida. Any part of the evidence may be received in written
1082 form, and all testimony of parties and witnesses shall be made
1083 under oath.

1084 2.~~(h)~~ Documentary evidence may be received in the form of
1085 a copy or excerpt. Upon request, parties shall be given an
1086 opportunity to compare the copy with the original, if available.

1087 3.~~(i)~~ Official recognition shall be requested in writing
1088 and filed with the presiding officer. The request must state
1089 with particularity the matter to be recognized and the grounds
1090 on which recognition is sought. When official recognition is
1091 requested, the parties shall be notified and given an
1092 opportunity to examine and contest the material. The presiding
1093 officer shall enter a written order granting or denying the
1094 request. All requests for official recognition are governed
1095 exclusively by ss. 90.201, 90.202, 90.203, 90.204, 90.205, and
1096 90.207.

1097 4.~~(j)~~ A party shall be permitted to conduct cross-
1098 examination when testimony is taken or documents are made a part
1099 of the record.

1100 (g)1.~~(k)1.~~ Any person subject to a subpoena may, before

1101 compliance and on timely petition, request the presiding officer
1102 having jurisdiction of the dispute to invalidate the subpoena on
1103 the ground that it was not lawfully issued, is unreasonably
1104 broad in scope, or requires the production of irrelevant
1105 material.

1106 2. A party may seek enforcement of a subpoena, order
1107 directing discovery, or order imposing sanctions issued under
1108 the authority of this chapter by filing a petition for
1109 enforcement under s. 120.69 in the circuit court of the judicial
1110 circuit in which the person failing to comply with the subpoena
1111 or order resides. A failure to comply with an order of the court
1112 shall result in a finding of contempt of court. However, no
1113 person shall be in contempt while a subpoena is being challenged
1114 under subparagraph 1. The court may award to the prevailing
1115 party all or part of the costs and attorney ~~attorney's~~ fees
1116 incurred in obtaining the court order as provided in s. 120.69
1117 ~~whenever the court determines that such an award should be~~
1118 ~~granted under the Florida Rules of Civil Procedure.~~

1119 3. Any public employee subpoenaed to appear at an agency
1120 proceeding shall be entitled to per diem and travel expenses at
1121 the same rate as that provided for state employees under s.
1122 112.061 if travel away from such public employee's headquarters
1123 is required. All other witnesses appearing pursuant to a
1124 subpoena shall be paid such fees and mileage for their
1125 attendance as is provided in s. 92.142 ~~civil actions in circuit~~

1126 ~~courts of this state.~~ In the case of a public employee, such
1127 expenses shall be processed and paid in the manner provided for
1128 agency employee travel expense reimbursement, and in the case of
1129 a witness who is not a public employee, payment of such fees and
1130 expenses shall accompany the subpoena.

1131 (h) For any proceeding arising under chapter 373, chapter
1132 378, or chapter 403, if a nonapplicant petitions as a third
1133 party to challenge an agency's issuance of a license, permit, or
1134 conceptual approval, the order of presentation in the proceeding
1135 is for the permit applicant to present a prima facie case
1136 demonstrating entitlement to the license, permit, or conceptual
1137 approval, followed by the agency. This demonstration may be made
1138 by entering into evidence the application and relevant material
1139 submitted to the agency in support of the application, and the
1140 agency's staff report or notice of intent to approve the permit,
1141 license, or conceptual approval. Subsequent to the presentation
1142 of the applicant's prima facie case and any direct evidence
1143 submitted by the agency, the petitioner initiating the action
1144 challenging the issuance of the license, permit, or conceptual
1145 approval has the burden of ultimate persuasion and has the
1146 burden of going forward to prove the case in opposition to the
1147 license, permit, or conceptual approval through the presentation
1148 of competent and substantial evidence. The permit applicant and
1149 agency may on rebuttal present any evidence relevant to
1150 demonstrating that the application meets the conditions for

1151 issuance. Notwithstanding subsection (1), this paragraph applies
1152 to proceedings under s. 120.574.

1153 (i)~~(1)~~ Unless the time period is waived or extended with
1154 the consent of all parties, the final order in a proceeding
1155 which affects substantial interests must be in writing, must ~~and~~
1156 include findings of fact, ~~if any,~~ and conclusions of law
1157 separately stated, and ~~it~~ must be rendered within 90 days:

1158 1. After the hearing is concluded, if conducted by the
1159 agency;

1160 2. After a recommended order is submitted to the agency
1161 and mailed to all parties, if the hearing is conducted by an
1162 administrative law judge; or

1163 3. After the agency has received the written and oral
1164 material it has authorized to be submitted, if there has been no
1165 hearing.

1166 (j)~~(m)~~ Findings of fact, if set forth in a manner which is
1167 no more than mere tracking of the statutory language, must be
1168 accompanied by a concise and explicit statement of the
1169 underlying facts of record which support the findings.

1170 (k)~~(n)~~ If an agency head finds that an immediate danger to
1171 the public health, safety, or welfare requires an immediate
1172 final order, it shall recite with particularity the facts
1173 underlying such finding in the final order, which shall be
1174 appealable or enjoicable from the date rendered.

1175 (l) Parties shall be notified of any order, including a

1176 final order. Unless waived, a copy of the order shall be
1177 delivered or mailed to each party or the party's attorney of
1178 record at the address of record. Each notice shall inform the
1179 recipient of any judicial review that is available under this
1180 section, s. 120.57, or s. 120.68; shall indicate the procedure
1181 which must be followed to obtain judicial review; and shall
1182 state the applicable time limits.

1183 ~~(o) On the request of any party, the administrative law~~
1184 ~~judge shall enter an initial scheduling order to facilitate the~~
1185 ~~just, speedy, and inexpensive determination of the proceeding.~~
1186 ~~The initial scheduling order shall establish a discovery period,~~
1187 ~~including a deadline by which all discovery shall be completed,~~
1188 ~~and the date by which the parties shall identify expert~~
1189 ~~witnesses and their opinions. The initial scheduling order also~~
1190 ~~may require the parties to meet and file a joint report by a~~
1191 ~~date certain.~~

1192 ~~(p) For any proceeding arising under chapter 373, chapter~~
1193 ~~378, or chapter 403, if a nonapplicant petitions as a third~~
1194 ~~party to challenge an agency's issuance of a license, permit, or~~
1195 ~~conceptual approval, the order of presentation in the proceeding~~
1196 ~~is for the permit applicant to present a prima facie case~~
1197 ~~demonstrating entitlement to the license, permit, or conceptual~~
1198 ~~approval, followed by the agency. This demonstration may be made~~
1199 ~~by entering into evidence the application and relevant material~~
1200 ~~submitted to the agency in support of the application, and the~~

1201 ~~agency's staff report or notice of intent to approve the permit,~~
 1202 ~~license, or conceptual approval. Subsequent to the presentation~~
 1203 ~~of the applicant's prima facie case and any direct evidence~~
 1204 ~~submitted by the agency, the petitioner initiating the action~~
 1205 ~~challenging the issuance of the license, permit, or conceptual~~
 1206 ~~approval has the burden of ultimate persuasion and has the~~
 1207 ~~burden of going forward to prove the case in opposition to the~~
 1208 ~~license, permit, or conceptual approval through the presentation~~
 1209 ~~of competent and substantial evidence. The permit applicant and~~
 1210 ~~agency may on rebuttal present any evidence relevant to~~
 1211 ~~demonstrating that the application meets the conditions for~~
 1212 ~~issuance. Notwithstanding subsection (1), this paragraph applies~~
 1213 ~~to proceedings under s. 120.574.~~

1214 Section 11. Section 120.5695, Florida Statutes, is created
 1215 to read:

1216 120.5695 Discovery in administrative proceedings.—This
 1217 section provides the exclusive authority and procedures to
 1218 conduct such discovery as is necessary in all administrative
 1219 hearings under this chapter.

1220 (1) MANDATORY INITIAL DISCLOSURES.—

1221 (a) Notwithstanding s. 120.56 or s. 120.57(3), at least 30
 1222 days after the date the agency provides written notice of its
 1223 decision to grant a hearing, each party to the proceeding shall
 1224 make the following initial disclosures to all other parties to
 1225 the proceeding:

1226 1. The name and, if known by the disclosing party, the
1227 address, telephone number, and electronic mail address of each
1228 person with discoverable information that the disclosing party
1229 may use to support one or more of its claims or defenses.

1230 2. For each person disclosed under subparagraph 1., each
1231 subject reasonably pertaining to the claims or defenses in the
1232 matter about which that person has information.

1233 3. The name, address, telephone number, and electronic
1234 mail address of each witness that the disclosing party may use
1235 in the final hearing in the proceeding to present evidence under
1236 s. 90.701, s. 90.702, s. 90.704, or s. 90.705. The disclosure
1237 under this subparagraph shall include:

1238 a. For each witness employed or retained in any capacity
1239 by the disclosing party to provide expert testimony in the
1240 proceeding, a written report that must contain:

1241 (I) The date of the report, a statement that the report
1242 was prepared by the witness, and the signature of the witness at
1243 the end of the report.

1244 (II) A complete statement of each opinion to which the
1245 witness will testify, including the basis of and the reasoning
1246 behind each opinion.

1247 (III) The facts and data considered by the witness in
1248 reaching each opinion.

1249 (IV) Exhibits the witness will use in presenting each
1250 opinion.

1251 (V) The qualification of the witness to render each
1252 opinion.

1253 (VI) The case name and case number for each legal case or
1254 administrative proceeding in the preceding 24 months in which
1255 the witness has testified as an expert, whether at trial, at
1256 final evidentiary hearing, or by deposition.

1257 (VII) A statement of the compensation to be paid to the
1258 witness for testifying in the proceeding.

1259 b. For all other witnesses who must be disclosed under
1260 this subparagraph but who are not required to prepare a written
1261 report, a statement that must contain:

1262 (I) The subject matter on which the witness is expected to
1263 testify under s. 90.701, s. 90.702, s. 90.704, or s. 90.705.

1264 (II) A summary of the facts and opinions to which the
1265 witness is expected to testify.

1266 c. Each party must supplement the disclosures made under
1267 this paragraph when required under this section.

1268 4. Each agency that is a party to the proceeding shall
1269 provide a copy of all public records, as defined in s.
1270 119.011(12) and not otherwise exempt from disclosure, containing
1271 information reasonably pertaining to the claims or defenses in
1272 the matter.

1273 5. In an enforcement proceeding, the agency shall disclose
1274 all public records that are otherwise exempt from disclosure and
1275 that contain exculpatory information about a specific party to

1276 that party only.

1277 6. Each nonagency party shall provide a description,
1278 including the location, of all of the physical documents,
1279 electronic documents, electronically stored information, and
1280 tangible items that the disclosing party has in its possession,
1281 custody, or control and may use to support one or more of its
1282 claims or defenses. Alternatively, the disclosing party may
1283 provide a copy of each item subject to disclosure under this
1284 subparagraph.

1285 7. A party is not required to disclose those persons,
1286 documents, information, or tangible items having only
1287 information that solely could be used for impeachment.

1288 (b) A party is not excused from making the disclosures
1289 required in paragraph (a) because it has not completed its
1290 investigation of the matter, is challenging the sufficiency of
1291 another party's responses, or another party has failed to make
1292 such disclosures.

1293 (c) In proceedings under s. 120.56 or s. 120.57(3), a
1294 party must make the disclosures required in paragraph (a) within
1295 10 days after the date of the initial order by the division
1296 under s. 120.569.

1297 (d) A party granted leave to intervene in a proceeding
1298 under s. 120.56 or s. 120.57(3) must make the disclosures
1299 required in paragraph (a) within 5 days after the date of the
1300 order granting leave to intervene. In all other proceedings, a

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1301 party granted leave to intervene in a proceeding must make such
1302 disclosures within 30 days after the date of the order granting
1303 leave to intervene.

1304 (e) All disclosures required in paragraph (a) shall be
1305 made in writing; signed by the counsel or qualified
1306 representative of the party, if represented, or by the actual
1307 party, if unrepresented; and served on all other parties to the
1308 proceeding.

1309 (f) On the motion of any party, the presiding officer is
1310 authorized to impose one or more, or any combination, of the
1311 following sanctions for the failure of a party to make the
1312 disclosures required in paragraph (a). The motion must be made
1313 in writing, be filed with the presiding officer, state with
1314 specificity the disclosures failed to be made, and contain the
1315 express certification that the moving party in good faith
1316 conferred or attempted to confer with the party failing to make
1317 such disclosures in an effort to resolve the issue without
1318 action by the presiding officer. The party failing to make such
1319 disclosures may be:

1320 1. Prohibited from proffering or submitting evidence that
1321 was not disclosed or that establishes a matter subject to such
1322 disclosures.

1323 2. Deemed to admit the moving party's statement of fact
1324 pertaining to the matter subject to such disclosures.

1325 3. Assessed the reasonable costs and attorney fees of the

1326 moving party for bringing the motion.

1327 4. Deemed to have waived further hearing on the matter
1328 subject to such disclosures.

1329 (2) PREHEARING CONFERENCE.—Any time after the agency
1330 grants the request for a hearing, the presiding officer is
1331 authorized to direct the parties to confer for the purpose of
1332 clarifying and simplifying issues, discussing settlement
1333 possibilities, examining documents and other exhibits,
1334 exchanging witness names and addresses, resolving other
1335 procedural matters, and entering into a prehearing stipulation.

1336 (3) DISCOVERY.—A party to an administrative proceeding may
1337 obtain discovery only after confirming the need for further
1338 discovery in the written response to the initial order of the
1339 presiding officer, including an initial order required by s.
1340 120.569(4) (e), and then only as authorized by the presiding
1341 officer in the initial discovery order.

1342 (a) The presiding officer shall enter an initial discovery
1343 order consistent with this paragraph.

1344 1. A response to an initial order, including an initial
1345 order under s. 120.569(4) (e), seeking to confirm the need for
1346 further discovery shall include the following:

1347 a. An express request for further discovery under the
1348 uniform rules by the party seeking discovery.

1349 b. An explanation as to why the required initial
1350 disclosures provide insufficient information to enable the

1351 requesting party to prepare for the hearing.

1352 c. The additional forms of discovery provided under the
1353 uniform rules that the party seeks to utilize.

1354 d. The estimated time necessary to complete discovery and
1355 a statement that such time will not delay the final hearing in
1356 the matter.

1357 e. Whether the other parties in the case concur in the
1358 request, will seek a separate provision for discovery, or oppose
1359 the request.

1360 2. If no party requests further discovery, within 5 days
1361 after the filing of the response to the initial order the
1362 presiding officer shall enter an initial discovery order stating
1363 that no party is authorized to obtain discovery under the
1364 uniform rules.

1365 3. If fewer than all parties request further discovery,
1366 within 5 days after the filing of the response to the initial
1367 order the presiding officer shall give notice to all parties of
1368 an initial discovery conference to determine the need for
1369 further discovery. After conducting the conference, the
1370 presiding officer shall enter an initial discovery order stating
1371 whether the need for further discovery is confirmed, and:

1372 a. If such need is confirmed, stating the forms of
1373 discovery the parties may utilize, setting the dates by which
1374 responses to each form of discovery shall be served, and
1375 directing the parties not to file discovery responses in the

1376 official record unless authorized by the presiding officer or
1377 the responses are proffered and admitted into evidence in the
1378 proceeding.

1379 b. If such need is not confirmed, stating that no party is
1380 authorized to obtain discovery under the uniform rules.

1381 4. If all parties concur in the need for further
1382 discovery, within 5 days after the filing of the response to the
1383 initial order the presiding officer shall enter an initial
1384 discovery order stating the forms of discovery the parties may
1385 utilize, setting the dates by which responses to each form of
1386 discovery shall be served, and directing the parties not to file
1387 discovery responses in the official record unless authorized by
1388 the presiding officer or the responses are proffered and
1389 admitted into evidence in the proceeding.

1390 (b) In all proceedings in which further discovery is
1391 authorized, the presiding officer may convene and conduct
1392 additional discovery conferences as necessary.

1393 (c) To supplement the required initial disclosures, as
1394 part of the uniform rules the Administration Commission shall
1395 adopt uniform rules of discovery for administrative proceedings
1396 involving disputed issues of material fact. The uniform rules of
1397 discovery must provide the timing, form, and frequency and
1398 limits of use of allowed discovery consistent with the
1399 requirements of this section and may not incorporate by
1400 reference rules of procedure adopted by the Supreme Court of

1401 this state, but may restate the terms and requirements of such
1402 court rules existing on January 1, 2017, as adapted by the
1403 Administration Commission for use in administrative proceedings.
1404 The Administration Commission shall not reference, incorporate,
1405 or apply any other rules of discovery for use in administrative
1406 proceedings except as provided in this subsection. The forms of
1407 discovery that are permitted in administrative proceedings shall
1408 be limited to the following:

- 1409 1. Deposition by oral examination.
- 1410 2. Written interrogatories.
- 1411 3. Production of documents or tangible items, including
1412 electronically stored information.
- 1413 4. Permission to enter upon land or other property for
1414 inspection and other purposes.
- 1415 5. Physical or mental examination.
- 1416 6. Requests for admission.

1417 (d) A party may not utilize a form of discovery more than
1418 once unless so authorized by the presiding officer in the
1419 initial discovery order or the subsequent order.

1420 (e) The uniform rules shall specify the use at hearing of
1421 the responses to each form of discovery.

1422 (f) The uniform rules of discovery shall include the
1423 procedure for a party or person from whom discovery is sought to
1424 apply to the presiding officer for an order protecting such
1425 party or person from annoyance, embarrassment, oppression, or

1426 undue burden or expense in responding to such discovery request.

1427 1. A party or person from whom discovery is sought must
1428 first inform the party seeking discovery of the objection to the
1429 requested discovery and state in writing an alternative that
1430 would protect the party or person from annoyance, embarrassment,
1431 oppression, or undue burden or expense.

1432 2. The motion shall contain a certification that the
1433 moving party or person in good faith conferred or attempted to
1434 confer with the party requesting the discovery in an effort to
1435 resolve the objection without action by the presiding officer.

1436 3. The uniform rules shall state the specific types of
1437 protection that the presiding officer may impose if the motion
1438 is granted, including any conditions on the taking of discovery.

1439 4. The presiding officer may award costs and attorney fees
1440 for making the motion to the prevailing party if the motion is
1441 denied in whole or in part.

1442 5. The presiding officer may award costs and attorney fees
1443 for making the motion to the moving party or person only upon
1444 first entering written findings of fact and conclusions of law
1445 that the party seeking discovery refused to revise the form of
1446 discovery request with the intent to annoy, embarrass, oppress,
1447 or impose an undue burden or expense on the party or person from
1448 whom discovery was sought.

1449 (g) A party may apply to the presiding officer for an
1450 order compelling discovery, including imposing sanctions as

1451 authorized in this paragraph, as follows:

1452 1. The uniform rules shall define what constitutes a
1453 failure to respond to each form of discovery.

1454 2. The application shall be made by motion filed with the
1455 presiding officer and served on all other parties.

1456 3. The motion shall contain a certification that the
1457 moving party in good faith conferred or attempted to confer with
1458 the party or person from whom the discovery was sought in an
1459 effort to obtain the information or material without action by
1460 the presiding officer.

1461 4. The presiding officer may award costs and attorney fees
1462 to the prevailing party unless the moving party failed to
1463 certify in the motion that a good faith effort was made to
1464 obtain the discovery sought without referring the issue to the
1465 presiding officer, the making of or opposition to the motion was
1466 justified, or other specific circumstances separately identified
1467 by the presiding officer make an award of costs and attorney
1468 fees unjust.

1469 5. The uniform rules of discovery shall provide the
1470 following sanctions if a party or person from whom discovery is
1471 sought fails to comply with a discovery request or an order
1472 compelling response to a discovery request:

1473 a. The presiding officer may order the service of full and
1474 complete responses to the requested discovery at least 15 days
1475 before the date of the final hearing.

1476 b. The presiding officer may enter an order finding one or
1477 more of the designated facts to which a specific discovery
1478 request pertains are established in accordance with the claim of
1479 the moving party for purposes of the proceeding.

1480 c. The presiding officer may enter an order prohibiting
1481 the party who failed to respond to the discovery request from
1482 introducing specific evidence or from opposing specific claims
1483 or defenses.

1484 d. Failure to admit or deny the truth of a request for
1485 admission no later than 30 days after the date the request is
1486 served shall render the request admitted for purposes of the
1487 proceeding.

1488 e. A party who fails to attend a deposition scheduled to
1489 take the testimony of the party or the party's representative,
1490 fails to attend the deposition of another that was noticed by
1491 the party, fails to respond to interrogatories, or fails to
1492 respond to a written request for production or examination,
1493 shall pay the reasonable expenses and attorney fees of the
1494 opposing party that scheduled the deposition, was noticed for
1495 deposition, or served the interrogatories, request to produce,
1496 or request for examination to which no response was received.

1497 (h) The uniform rules of discovery shall establish
1498 procedures to protect the content of inadvertently disclosed
1499 material that is privileged, protected as trial preparation, or
1500 exempt from disclosure under chapter 119.

1501 (4) SUPPLEMENTING INITIAL DISCLOSURES OR DISCOVERY
 1502 RESPONSES.—A party must supplement in writing an initial
 1503 disclosure, a response to a discovery request, the information
 1504 included in the report of an expert witness, or the information
 1505 provided during the expert's deposition testimony as follows:

1506 (a) Within 5 days after the date the party learns the
 1507 disclosure or discovery response is incomplete or incorrect and
 1508 the corrective information was not previously made known to the
 1509 other parties.

1510 (b) Within 5 days after the date of an order by the
 1511 presiding officer requiring the corrective information.

1512 Section 12. Subsections (1), (2), and (3) of section
 1513 120.57, Florida Statutes, are amended to read:

1514 120.57 Additional procedures for particular cases.—

1515 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
 1516 DISPUTED ISSUES OF MATERIAL FACT.—

1517 (a) Except as provided in ss. 120.80 and 120.81, an
 1518 administrative law judge assigned by the division shall conduct
 1519 all hearings under this subsection, except for hearings before
 1520 agency heads or a member thereof. ~~If the administrative law~~
 1521 ~~judge assigned to a hearing becomes unavailable, the division~~
 1522 ~~shall assign another administrative law judge who shall use any~~
 1523 ~~existing record and receive any additional evidence or argument,~~
 1524 ~~if any, which the new administrative law judge finds necessary.~~

1525 (b) Each party to a proceeding shall have an opportunity

1526 to file responsive pleadings, present evidence, submit rebuttal
1527 evidence, and present argument on all issues arising in the
1528 proceeding; All parties shall have an opportunity to respond, to
1529 present evidence and argument on all issues involved, to conduct
1530 cross-examination and submit rebuttal evidence, to submit
1531 proposed findings of facts and proposed orders; ~~to file~~
1532 exceptions to the presiding officer's recommended order; ~~and to~~
1533 be represented by counsel or other qualified representative.

1534 1. The presiding officer may allow ~~When appropriate,~~ the
1535 general public may be given an opportunity to present oral or
1536 written communications in the following circumstances:

1537 a. On the written request of a party to the proceeding
1538 stating the relevance of the communications from the general
1539 public to an issue pending before the presiding officer and
1540 showing the probative value of the requested material outweighs
1541 any prejudice to any other party.

1542 b. After a hearing affording each party opposing the
1543 written request an opportunity to rebut the representations of
1544 the requesting party.

1545 c. After the entry of an order by the presiding officer
1546 finding the introduction of the requested material is relevant
1547 and its probative value outweighs any prejudice to any party,
1548 stating the method by which the material may be submitted by the
1549 general public and made part of the record of the proceeding,
1550 and setting the specific date and procedure for the requested

1551 submission.

1552 2. If the agency proposes to consider such material, then
1553 all parties shall be given an opportunity to cross-examine or
1554 challenge or rebut the material.

1555 (c) Findings of fact shall be supported by competent,
1556 substantial evidence admitted into the record. Except as
1557 otherwise provided by law, the admissibility of evidence in
1558 administrative hearings shall be governed exclusively by
1559 chapters 90 and 92 and this paragraph. Hearsay evidence may ~~be~~
1560 ~~used for the purpose of supplementing or explaining other~~
1561 ~~evidence, but it shall not be sufficient in itself to support a~~
1562 ~~finding if unless it would be admissible under chapter 90 over~~
1563 ~~objection in civil actions.~~

1564 (d) Notwithstanding s. 120.569(5)(f) ~~120.569(2)(g)~~,
1565 similar fact evidence of other violations, wrongs, or acts is
1566 admissible ~~when relevant~~ to prove a material fact in issue, such
1567 as proof of motive, opportunity, intent, preparation, plan,
1568 knowledge, identity, or absence of mistake or accident, but ~~it~~
1569 is inadmissible when offered ~~the evidence is relevant~~ solely to
1570 prove bad character or propensity. At least 10 days before the
1571 commencement of the proceeding, an agency intending ~~When the~~
1572 ~~state in an administrative proceeding intends~~ to offer evidence
1573 of other acts or offenses under this paragraph, ~~the state~~ shall
1574 furnish to the party whose substantial interests are being
1575 determined and whose other acts or offenses will be the subject

1576 of such evidence, ~~no fewer than 10 days before commencement of~~
1577 ~~the proceeding,~~ a written statement describing with
1578 particularity ~~of the acts or offenses it intends to offer,~~
1579 ~~describing them~~ and the evidence the agency state intends to
1580 offer ~~with particularity~~. Notice is not required for evidence of
1581 acts or offenses which is used for impeachment or on rebuttal.

1582 (e)1. An agency or an administrative law judge may not
1583 base agency action that determines the substantial interests of
1584 a party on an unadopted rule or a rule that is an invalid
1585 exercise of delegated legislative authority. This subparagraph
1586 does not preclude application of valid adopted rules and
1587 applicable provisions of law to the facts.

1588 2. In a matter initiated as a result of agency action
1589 proposing to determine the substantial interests of a party, the
1590 party's timely petition for hearing may challenge the proposed
1591 agency action based on a rule that is an invalid exercise of
1592 delegated legislative authority or based on an alleged unadopted
1593 rule. For challenges brought under this subparagraph:

1594 a. The challenge may be pled as a defense using the
1595 procedures set forth in s. 120.56(1)(b).

1596 b. Section 120.56(3)(a) applies to a challenge alleging
1597 that a rule is an invalid exercise of delegated legislative
1598 authority.

1599 c. Section 120.56(4)(c) applies to a challenge alleging an
1600 unadopted rule.

1601 d. This subparagraph does not preclude the consolidation
1602 of any proceeding under s. 120.56 with any proceeding under this
1603 paragraph.

1604 3. Notwithstanding subparagraph 1., if an agency
1605 demonstrates that the statute being implemented directs it to
1606 adopt rules, that the agency has not had time to adopt those
1607 rules because the requirement was so recently enacted, and that
1608 the agency has initiated rulemaking and is proceeding
1609 expeditiously and in good faith to adopt the required rules,
1610 then the agency's action may be based upon those unadopted rules
1611 if the administrative law judge determines that rulemaking is
1612 neither feasible nor practicable and the unadopted rules would
1613 not constitute an invalid exercise of delegated legislative
1614 authority if adopted as rules. An unadopted rule shall not be
1615 presumed valid. The agency must demonstrate that the unadopted
1616 rule:

1617 a. Is within the powers, functions, and duties delegated
1618 by the Legislature or, if the agency is operating pursuant to
1619 authority vested in the agency by the State Constitution, is
1620 within that authority;

1621 b. Does not enlarge, modify, or contravene the specific
1622 provisions of law implemented;

1623 c. Is not vague, establishes adequate standards for agency
1624 decisions, or does not vest unbridled discretion in the agency;

1625 d. Is not arbitrary or capricious. A rule is arbitrary if

1626 it is not supported by logic or the necessary facts; a rule is
1627 capricious if it is adopted without thought or reason or is
1628 irrational;

1629 e. Is not being applied to the substantially affected
1630 party without due notice; and

1631 f. Does not impose excessive regulatory costs on the
1632 regulated person, county, or city.

1633 4. The recommended and final orders in any proceeding
1634 shall be governed by paragraphs (k) and (l), except that the
1635 administrative law judge's determination regarding an unadopted
1636 rule under subparagraph 1. or subparagraph 2. shall not be
1637 rejected by the agency unless the agency first determines from a
1638 review of the complete record, and states with particularity in
1639 the order, that such determination is clearly erroneous or does
1640 not comply with essential requirements of law. In any proceeding
1641 for review under s. 120.68, if the court finds that the agency's
1642 rejection of the determination regarding the unadopted rule does
1643 not comport with this subparagraph, the agency action shall be
1644 set aside and the court shall award to the prevailing party the
1645 reasonable costs and a reasonable attorney fee for the initial
1646 proceeding and the proceeding for review.

1647 5. A petitioner may pursue a separate, collateral
1648 challenge under s. 120.56 even if an adequate remedy exists
1649 through a proceeding under this section. The administrative law
1650 judge may consolidate the proceedings.

1651 (f) The record in a case governed by this subsection shall
 1652 consist only of:

1653 1. All notices, pleadings, motions, and intermediate
 1654 rulings.

1655 2. Evidence admitted.

1656 3. Those matters officially recognized.

1657 4. Proffers of proof and objections and rulings thereon.

1658 5. Proposed findings and exceptions.

1659 6. Any decision, opinion, order, or report by the
 1660 presiding officer.

1661 7. All staff memoranda or data submitted to the presiding
 1662 officer during the hearing or prior to its disposition, after
 1663 notice of the submission to all parties, except communications
 1664 by advisory staff as permitted under s. 120.66(1), if such
 1665 communications are public records.

1666 8. All matters placed on the record after an ex parte
 1667 communication.

1668 9. The official transcript.

1669 (g) The agency shall accurately and completely preserve
 1670 all testimony in the proceeding, and, on the request of any
 1671 party, ~~it~~ shall make a full or partial transcript available at
 1672 no more than actual cost.

1673 (h) Any party to a proceeding in which an administrative
 1674 law judge has final order authority may move for a summary final
 1675 order when there is no genuine issue as to any material fact. A

1676 summary final order shall be rendered if the administrative law
1677 judge determines from the initial disclosures and responses to
1678 discovery ~~pleadings, depositions, answers to interrogatories,~~
1679 ~~and admissions~~ on file, together with affidavits, if any, that
1680 no genuine issue as to any material fact exists and that the
1681 moving party is entitled as a matter of law to the entry of a
1682 final order. A summary final order shall consist of findings of
1683 fact, if any, conclusions of law, a disposition or penalty, if
1684 applicable, and any other information required by law to be
1685 contained in the final order.

1686 (i) When, in any proceeding conducted pursuant to this
1687 subsection, a dispute of material fact no longer exists, any
1688 party may move the administrative law judge to relinquish
1689 jurisdiction to the agency. An order relinquishing jurisdiction
1690 shall be rendered if the administrative law judge determines
1691 from the pleadings, initial disclosures and responses to
1692 discovery ~~depositions, answers to interrogatories, and~~
1693 ~~admissions~~ on file, together with supporting and opposing
1694 affidavits, if any, that no genuine issue as to any material
1695 fact exists. If the administrative law judge enters an order
1696 relinquishing jurisdiction, the agency may promptly conduct a
1697 proceeding pursuant to subsection (2), ~~if appropriate,~~ but the
1698 parties may not raise any issues of disputed fact that could
1699 have been raised before the administrative law judge. An order
1700 ~~entered by an administrative law judge~~ relinquishing

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1701 jurisdiction to the agency under this paragraph ~~based upon a~~
1702 ~~determination that no genuine dispute of material fact exists,~~
1703 need not contain findings of fact, conclusions of law, or a
1704 recommended disposition or penalty.

1705 (j) Except as otherwise provided by law, findings of fact
1706 shall be based exclusively on the evidence of record and on
1707 matters officially recognized and ~~shall be based upon a~~
1708 ~~preponderance of the evidence, except enforcement action in~~
1709 ~~penal or licensure disciplinary proceedings in which the~~
1710 findings of fact shall be based upon clear and convincing
1711 evidence or except as otherwise provided by statute, and shall
1712 ~~be based exclusively on the evidence of record and on matters~~
1713 ~~officially recognized.~~

1714 (k) The presiding officer shall complete and submit to the
1715 agency and all parties a recommended order consisting of
1716 findings of fact, conclusions of law, and recommended
1717 disposition or penalty, if applicable, and any other information
1718 required by law to be contained in the final order. ~~All~~
1719 ~~proceedings conducted under this subsection shall be de novo.~~
1720 The agency shall allow each party 15 days in which to submit
1721 written exceptions to the recommended order. Each written
1722 exception shall clearly identify the disputed portion of the
1723 recommended order by page number or paragraph, shall state the
1724 legal basis for the exception, and shall include appropriate and
1725 specific citations to the record. The final order shall include

1726 an explicit ruling on each exception, but an agency shall need
1727 not rule on an exception that does not provide the information
1728 required in this paragraph ~~clearly identify the disputed portion~~
1729 ~~of the recommended order by page number or paragraph, that does~~
1730 ~~not identify the legal basis for the exception, or that does not~~
1731 ~~include appropriate and specific citations to the record.~~

1732 (1) The agency may adopt the recommended order as the
1733 final order of the agency.

1734 1. The agency in its final order may reject or modify the
1735 conclusions of law ~~over which it has substantive jurisdiction~~
1736 and interpretation of administrative rules over which it has
1737 substantive jurisdiction.

1738 2. When rejecting or modifying a ~~such~~ conclusion of law or
1739 interpretation of administrative rule, the agency must state
1740 with particularity its reasons for such rejection or
1741 modification ~~rejecting or modifying such conclusion of law or~~
1742 ~~interpretation of administrative rule~~ and must make a finding
1743 that its substituted conclusion of law or interpretation of
1744 administrative rule is as or more reasonable than that which was
1745 rejected or modified.

1746 3. Rejection or modification of conclusions of law may not
1747 form the basis for rejecting or modifying a finding ~~rejection or~~
1748 ~~modification of findings~~ of fact. The agency may not reject or
1749 modify a finding ~~the findings~~ of fact unless the agency first
1750 determines from a review of the entire record, and states with

1751 particularity in the order, that the finding ~~findings~~ of fact
1752 was ~~were~~ not based upon competent substantial evidence or that
1753 the proceedings on which the finding was ~~findings were~~ based did
1754 not comply with the essential requirements of law. For purposes
1755 of this subparagraph, the agency is authorized to interpret,
1756 modify, or reject the rulings on admissibility of evidence made
1757 by the administrative law judge or presiding officer, including
1758 rulings on the purposes for which the evidence was admitted.

1759 4. The agency may accept the recommended penalty in a
1760 recommended order, but may not reduce or increase it without a
1761 review of the complete record and without stating with
1762 particularity its reasons therefor in the order, by citing to
1763 the record in justifying the action.

1764 (m) If a recommended order is submitted to an agency, the
1765 agency shall provide a copy of its final order and any
1766 exceptions to the division within 15 days after the order is
1767 filed with the agency clerk.

1768 (n) The time requirements of this chapter shall control
1769 over any conflicting statute or administrative rule
1770 ~~Notwithstanding any law to the contrary, when statutes or rules~~
1771 ~~impose conflicting time requirements for the scheduling of~~
1772 ~~expedited hearings or issuance of recommended or final orders,~~
1773 ~~the director of the division shall have the authority to set the~~
1774 ~~proceedings for the orderly operation of this chapter.~~

1775 (o) All proceedings conducted under this subsection shall

1776 | be de novo.

1777 | (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT
1778 | INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which
1779 | subsection (1) does not apply:

1780 | (a) Unless otherwise agreed, in all hearings that do not
1781 | involve disputed issues of material fact, the agency shall:

1782 | 1. ~~Give reasonable notice to affected persons of the~~
1783 | ~~action of the agency, whether proposed or already taken, or of~~
1784 | ~~its decision to refuse action, together with a summary of the~~
1785 | ~~factual, legal, and policy grounds therefor.~~

1786 | 2. Give parties ~~or their counsel~~ the opportunity ~~option,~~
1787 | ~~at a convenient time and place,~~ to present to a hearing officer
1788 | designated by the agency head or Governor ~~or hearing officer~~
1789 | written or oral material, or both, ~~evidence~~ in opposition to the
1790 | proposed action of the agency or to its refusal to act, or a
1791 | written statement challenging the grounds upon which the agency
1792 | has chosen to justify its action or inaction.

1793 | ~~2.3.~~ If the objections of the parties are overruled,
1794 | provide a written explanation within 7 days.

1795 | (b) An agency may not base agency action that determines
1796 | the substantial interests of a party on an unadopted rule or a
1797 | rule that is an invalid exercise of delegated legislative
1798 | authority.

1799 | (c) The record shall only consist of:

1800 | 1. The notice and summary of grounds.

- 1801 2. Evidence received.
- 1802 3. All written statements submitted.
- 1803 4. Any decision overruling objections.
- 1804 5. All matters placed on the record after an ex parte
- 1805 communication.
- 1806 6. The official transcript, if one is prepared.
- 1807 7. Any decision, opinion, order, or report by the
- 1808 presiding officer.

1809 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
 1810 CONTRACT SOLICITATION OR AWARD.—Agencies subject to this chapter
 1811 shall use the uniform rules of procedure, which provide
 1812 procedures for the resolution of protests arising from the
 1813 contract solicitation or award process. Such rules shall at
 1814 least provide that:

1815 (a) The agency shall provide notice of a decision or
 1816 intended decision concerning a solicitation, contract award, or
 1817 exceptional purchase by electronic posting. This notice shall
 1818 contain the following statement: "Failure to file a protest
 1819 within the time prescribed in section 120.57(3), Florida
 1820 Statutes, or failure to post the bond or other security required
 1821 by law within the time allowed for filing a bond shall
 1822 constitute a waiver of proceedings under chapter 120, Florida
 1823 Statutes."

1824 (b) 1. Any person who is adversely affected by the agency
 1825 decision or intended decision shall file with the agency a

1826 notice of protest in writing within 72 hours after the posting
1827 of the notice of decision or intended decision.

1828 2. With respect to a protest of the terms, conditions, and
1829 specifications contained in a solicitation, including any
1830 provisions governing the methods for ranking bids, proposals, or
1831 replies, awarding contracts, reserving rights of further
1832 negotiation, or modifying or amending any contract, the notice
1833 of protest shall be filed in writing within 72 hours after the
1834 posting of the solicitation.

1835 3. The formal written protest shall be filed within 10
1836 days after the date the notice of protest is filed.

1837 4. Failure to file a notice of protest or failure to file
1838 a formal written protest shall constitute a waiver of
1839 proceedings under this chapter.

1840 5. The formal written protest shall state with
1841 particularity the facts and law upon which the protest is based.
1842 ~~Saturdays, Sundays, and state holidays shall be excluded in the~~
1843 ~~computation of the 72-hour time periods provided by this~~
1844 ~~paragraph.~~

1845 (c) Upon receiving a ~~receipt of the formal written protest~~
1846 ~~that has been~~ timely filed written protest, the agency shall
1847 stop the solicitation or contract award process until the
1848 subject of the protest is resolved by final agency action,
1849 unless the agency head sets forth in writing particular facts
1850 and circumstances which require continuing ~~the continuance of~~

1851 the solicitation or contract award process without delay in
1852 order to avoid an immediate and serious danger to the public
1853 health, safety, or welfare.

1854 (d)1. The agency shall provide an opportunity to resolve
1855 the protest by mutual agreement between the parties within 7
1856 days after the date the agency receives the, ~~excluding~~
1857 ~~Saturdays, Sundays, and state holidays, after receipt of a~~
1858 ~~formal~~ written protest.

1859 2. If the subject of a protest is not resolved by mutual
1860 agreement within 7 days after the date the agency receives,
1861 ~~excluding Saturdays, Sundays, and state holidays, after receipt~~
1862 ~~of the formal~~ written protest, and if there is no disputed issue
1863 of material fact, the agency shall conduct a ~~an informal~~
1864 proceeding ~~shall be conducted~~ pursuant to subsection (2) ~~and~~
1865 ~~applicable agency rules before a person whose qualifications~~
1866 ~~have been prescribed by rules of the agency.~~

1867 3. If the subject of a protest is not resolved by mutual
1868 agreement within 7 days after the date the agency receives,
1869 ~~excluding Saturdays, Sundays, and state holidays, after receipt~~
1870 ~~of the formal~~ written protest, and if there is a disputed issue
1871 of material fact, the agency shall refer the protest to the
1872 division by electronic means through the division's website for
1873 proceedings under subsection (1).

1874 (e) Upon receiving ~~receipt of a formal~~ written protest
1875 referred pursuant to this subsection, the ~~director of the~~

1876 | division shall expedite the hearing by assigning ~~and assign~~ an
1877 | administrative law judge who shall commence a hearing within 30
1878 | days after the ~~receipt of the formal~~ written protest is filed
1879 | with ~~by~~ the division and enter a recommended order within 30
1880 | days after the hearing or ~~within 30 days after receipt of the~~
1881 | hearing transcript is filed with ~~by~~ the division ~~administrative~~
1882 | ~~law judge~~, whichever is later. Each party shall be allowed 10
1883 | days in which to submit written exceptions to the recommended
1884 | order. A final order shall be entered by the agency within 30
1885 | days after ~~of~~ the entry of a recommended order. The provisions
1886 | of this paragraph may be waived upon stipulation by all parties.

1887 | (f)1. In a protest to an invitation to bid or request for
1888 | proposals procurement, no submissions made after the bid or
1889 | proposal opening which amend or supplement the bid or proposal
1890 | shall be considered.

1891 | 2. In a protest to an invitation to negotiate procurement,
1892 | no submissions made after the agency announces its intent to
1893 | award a contract, reject all replies, or withdraw the
1894 | solicitation which amend or supplement the reply shall be
1895 | considered.

1896 | 3. Unless otherwise provided by statute, the burden of
1897 | proof shall rest with the party protesting the proposed agency
1898 | action.

1899 | 4. In a competitive-procurement protest, other than a
1900 | rejection of all bids, proposals, or replies, the administrative

1901 law judge shall conduct a de novo proceeding to determine
 1902 whether the agency's proposed action is contrary to the agency's
 1903 governing statutes, the agency's rules ~~or policies~~, or the
 1904 solicitation specifications. The standard of proof for such
 1905 proceedings shall be whether the proposed agency action was
 1906 clearly erroneous, contrary to competition, arbitrary, or
 1907 capricious.

1908 5. In any bid-protest proceeding contesting an intended
 1909 agency action to reject all bids, proposals, or replies, the
 1910 standard to be applied ~~of review~~ by an administrative law judge
 1911 shall be whether the agency's intended action is illegal,
 1912 arbitrary, dishonest, or fraudulent.

1913 (g) For purposes of this subsection, the definitions in s.
 1914 287.012 apply.

1915 (h) Saturdays, Sundays, and state holidays are excluded
 1916 when computing all time periods of fewer than 10 days as
 1917 provided in this section.

1918 Section 13. Paragraphs (c) and (d) of subsection (1) of
 1919 section 120.574, Florida Statutes, are redesignated as
 1920 paragraphs (b) and (c), respectively, and paragraphs (a) and (b)
 1921 of subsection (1) and paragraphs (a) and (b) of subsection (2)
 1922 of that section are amended to read:

1923 120.574 Summary hearing.—

1924 (1) (a) ~~Within 5 business days following the division's~~
 1925 ~~receipt of a petition or request for hearing, the division shall~~

1926 ~~issue and serve on all original parties an initial order that~~
 1927 ~~assigns the case to a specific administrative law judge and~~
 1928 ~~provides general information regarding practice and procedure~~
 1929 ~~before the division. The initial order shall also contain a~~
 1930 ~~statement advising the addressees that a summary hearing is~~
 1931 ~~available upon the agreement of all parties under subsection (2)~~
 1932 ~~and briefly describing the expedited time sequences, limited~~
 1933 ~~discovery, and final order provisions of the summary procedure.~~

1934 ~~(b)~~ Within 15 days after service of the initial order
 1935 required by s. 120.569, any party may file with the division a
 1936 motion for summary hearing to be conducted in accordance with
 1937 subsection (2). If all original parties agree, in writing, to
 1938 the summary proceeding, the proceeding shall be conducted
 1939 pursuant to the summary hearing process within 30 days after ~~of~~
 1940 the agreement, ~~in accordance with the provisions of subsection~~
 1941 ~~(2)~~.

1942 (2) In any case to which this subsection is applicable,
 1943 the following procedures apply:

1944 (a) Motions shall be limited to the following:

1945 1. A motion in opposition to the proposed agency action of
 1946 enforcement action ~~petition~~.

1947 2. A motion requesting discovery beyond the informal
 1948 exchange of documents and witness lists described in paragraph

1949 (b). Upon a showing of necessity, additional discovery may be
 1950 permitted in the discretion of the administrative law judge, but

1951 only if it can be completed not later than 5 days prior to the
 1952 final hearing.

1953 3. A motion for continuance of the final hearing date.

1954 4. A motion requesting a prehearing conference, or the
 1955 administrative law judge may require a prehearing conference,
 1956 for the purpose of identifying: the legal and factual issues to
 1957 be considered at the final hearing; the names and addresses of
 1958 witnesses who may be called to testify at the final hearing;
 1959 documentary evidence that will be offered at the final hearing;
 1960 the range of penalties that may be imposed upon final hearing;
 1961 and any other matter that the administrative law judge
 1962 determines would expedite resolution of the proceeding. The
 1963 prehearing conference may be held by telecommunications
 1964 ~~telephone~~ conference ~~call~~.

1965 5. During or after any preliminary hearing or conference,
 1966 any party or the administrative law judge may suggest that the
 1967 case is no longer appropriate for summary hearing ~~disposition~~.
 1968 Following any argument requested by the parties, the
 1969 administrative law judge may enter an order referring the case
 1970 back to the ~~formal~~ adjudicatory process under s. 120.569
 1971 ~~described in s. 120.57(1), in which event the parties shall~~
 1972 ~~proceed accordingly~~.

1973 (b) At least ~~Not later than~~ 5 days before ~~prior to~~ the
 1974 final hearing, the parties shall furnish to each other copies of
 1975 all documentary evidence to be introduced and lists of witnesses

1976 | who may testify at the final hearing.

1977 | Section 14. Section 120.576, Florida Statutes, is created
1978 | to read:

1979 | 120.576 Filing administrative settlements with the
1980 | committee.—A copy of each final agency action rendered pursuant
1981 | to s. 120.57(4) containing a statement of agency policy that may
1982 | be the basis of future agency decisions or that otherwise
1983 | contains a statement of precedential value shall be filed with
1984 | the committee by the agency within 10 days after the date the
1985 | agency executes the final agency action.

1986 | Section 15. Paragraph (b) of subsection (4) of section
1987 | 120.595, Florida Statutes, is amended to read:

1988 | 120.595 Attorney ~~Attorney's~~ fees.—

1989 | (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
1990 | 120.56(4).—

1991 | (b) Upon notification to the administrative law judge
1992 | provided before the final hearing that the agency has published
1993 | a notice of rulemaking under s. 120.54(3)(a), such notice shall
1994 | automatically operate as a stay of proceedings pending
1995 | rulemaking. The administrative law judge may vacate the stay for
1996 | good cause shown. A stay of proceedings under this paragraph
1997 | remains in effect so long as the agency is proceeding
1998 | expeditiously and in good faith to adopt the statement as a
1999 | rule. The administrative law judge shall award reasonable costs
2000 | and reasonable attorney ~~attorney's~~ fees accrued by the

2001 petitioner prior to the date the notice was published, unless
 2002 the agency proves to the administrative law judge that it did
 2003 not know and should not have known that the statement was an
 2004 unadopted rule. Attorneys' fees and costs under this paragraph
 2005 and paragraph (a) shall be awarded only upon a finding that the
 2006 agency received notice that the statement may constitute an
 2007 unadopted rule at least 30 days before a petition under s.
 2008 120.56(4) was filed and that the agency failed to publish the
 2009 required notice of rulemaking pursuant to s. 120.54(3) that
 2010 addresses the statement within that 30-day period. Notice to the
 2011 agency may be satisfied by its receipt of a copy of the s.
 2012 120.56(4) petition, a notice or other paper containing
 2013 substantially the same information, or a petition filed pursuant
 2014 to s. 120.54(6) ~~120.54(7)~~. An award of attorney ~~attorney's~~ fees
 2015 as provided by this paragraph may not exceed \$50,000.

2016 Section 16. Subsection (5) of section 120.60, Florida
 2017 Statutes, is amended to read:

2018 120.60 Licensing.—

2019 (5) A ~~No~~ revocation, suspension, annulment, or withdrawal
 2020 of any license is not lawful unless, prior to the entry of a
 2021 final order, the agency has served, by personal service or
 2022 certified mail directed to the licensee at the address most
 2023 recently filed with the agency by the licensee, an
 2024 administrative complaint which affords reasonable notice to the
 2025 licensee of facts or conduct which warrant the intended action

2026 and unless the licensee has been given an adequate opportunity
 2027 to request a proceeding pursuant to ss. 120.569 and 120.57. A
 2028 licensee is required at all times to maintain with the agency
 2029 the correct physical address at which the licensee may be served
 2030 with any document by personal service or certified mail. Service
 2031 on the licensee shall be complete upon attempted personal
 2032 service or delivery of certified mail to the address most
 2033 recently filed with the agency by the licensee ~~When personal~~
 2034 ~~service cannot be made and the certified mail notice is returned~~
 2035 ~~undelivered, the agency shall cause a short, plain notice to the~~
 2036 ~~licensee to be published once each week for 4 consecutive weeks~~
 2037 ~~in a newspaper published in the county of the licensee's last~~
 2038 ~~known address as it appears on the records of the agency. If no~~
 2039 ~~newspaper is published in that county, the notice may be~~
 2040 ~~published in a newspaper of general circulation in that county.~~

2041 Section 17. Section 120.64, Florida Statutes, is created
 2042 to read:

2043 120.64 Agency hearing officers.—The designation of
 2044 individuals to serve as agency hearing officers and the conduct
 2045 of agency hearing officers in proceedings under s. 120.57 shall
 2046 comply with this section.

2047 (1) DESIGNATION AS AGENCY HEARING OFFICER.—The agency head
 2048 shall designate in writing individuals to serve as agency
 2049 hearing officers. The responsibility to designate or reassign
 2050 agency hearing officers, or remove individuals from serving as

2051 agency hearing officers, may not be delegated to any other
 2052 person. For those agencies headed by appointees serving at the
 2053 pleasure of the Governor, the Governor may exercise the
 2054 authority provided in this subsection.

2055 (2) MINIMUM QUALIFICATIONS.—An individual must meet one of
 2056 the education and experience requirements in paragraph (a) and
 2057 all of the requirements in paragraph (b) at the time of initial
 2058 designation as an agency hearing officer:

2059 (a)1. Be a member in good standing of The Florida Bar for
 2060 at least 2 years;

2061 2. Hold a graduate degree in public administration or a
 2062 field of study directly related to the substantive laws over
 2063 which the agency has jurisdiction and be employed by the agency
 2064 for at least 2 years;

2065 3. Hold a 4-year undergraduate degree in any field of
 2066 study and be employed by the agency for at least 5 years;

2067 4. Hold a 2-year degree in any field of study and be
 2068 employed by the agency for at least 7 years; or

2069 5. Be employed by the agency for at least 10 years.

2070 (b) Before an individual is designated as an agency
 2071 hearing officer, the general counsel of the agency shall certify
 2072 the following in writing to the agency head:

2073 1. The individual is familiar with the requirements and
 2074 procedures of this chapter and the uniform rules of procedure
 2075 adopted by the Administration Commission.

2076 2. The individual is familiar with the substantive laws
2077 and agency rules under which the individual will conduct
2078 hearings for the agency.

2079 3. The individual is familiar with the agency's internal
2080 operating procedures applicable to the matters on which the
2081 individual will conduct hearings for the agency.

2082 4. The chapters of substantive laws under which the
2083 individual is qualified to conduct hearings for the agency.

2084
2085 In lieu of certifying that the individual meets the requirements
2086 of subparagraphs 1.-3., the general counsel of the agency may
2087 certify in writing that such individual meets the requirements
2088 of subparagraph 4. and successfully completed an APA training
2089 program approved by the Administration Commission and conducted
2090 by the division.

2091 (3) TERMINATION OF DESIGNATION AS AGENCY HEARING OFFICER.—
2092 At any time, with or without cause, the agency head may execute
2093 a written notice terminating an individual's designation as an
2094 agency hearing officer effective immediately. For those agencies
2095 headed by appointees serving at the pleasure of the Governor,
2096 the Governor may exercise the authority provided in this
2097 subsection.

2098 Section 18. Subsections (1) and (2) of section 120.68,
2099 Florida Statutes, are amended to read:

2100 120.68 Judicial review.—

2101 (1) (a) A party who is adversely affected by final agency
 2102 action is entitled to judicial review.

2103 (b) A preliminary, procedural, or intermediate order of
 2104 the agency or of an administrative law judge ~~of the Division of~~
 2105 ~~Administrative Hearings~~ is immediately reviewable if review of
 2106 the final agency decision would not provide an adequate remedy.

2107 (2) (a) Judicial review shall be sought in the appellate
 2108 district where the agency maintains its headquarters or where a
 2109 party resides or as otherwise provided by law.

2110 (b) All proceedings shall be instituted by filing a notice
 2111 of appeal with the agency ~~or petition for review in accordance~~
 2112 ~~with the Florida Rules of Appellate Procedure~~ within 30 days
 2113 after the date that ~~rendition of~~ the order being appealed was
 2114 filed with the agency clerk. If the appeal is of an order
 2115 rendered in a proceeding initiated under s. 120.56, the agency
 2116 whose rule is being challenged shall transmit a copy of the
 2117 notice of appeal to the committee.

2118 (c) ~~(b)~~ When proceedings under this chapter are
 2119 consolidated for final hearing and the parties to the
 2120 consolidated proceeding seek review of final or interlocutory
 2121 orders in more than one district court of appeal, the courts of
 2122 appeal are authorized to transfer and consolidate the review
 2123 proceedings. The court may transfer such appellate proceedings
 2124 on its own motion, upon motion of a party to one of the
 2125 appellate proceedings, or by stipulation of the parties to the

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2126 appellate proceedings. In determining whether to transfer a
2127 proceeding, the court may consider such factors as the
2128 interrelationship of the parties and the proceedings, the
2129 desirability of avoiding inconsistent results in related
2130 matters, judicial economy, and the burden on the parties of
2131 reproducing the record for use in multiple appellate courts.

2132 Section 19. Paragraph (b) of subsection (10) of section
2133 120.80, Florida Statutes, is amended to read:

2134 120.80 Exceptions and special requirements; agencies.—

2135 (10) DEPARTMENT OF ECONOMIC OPPORTUNITY.—

2136 (b) Notwithstanding s. 120.5401 ~~120.54(5)~~, the uniform
2137 rules of procedure do not apply to appeal proceedings conducted
2138 under chapter 443 by the Reemployment Assistance Appeals
2139 Commission, special deputies, or reemployment assistance appeals
2140 referees.

2141 Section 20. Paragraph (a) of subsection (3) and subsection
2142 (4) of section 120.81, Florida Statutes, are amended to read:

2143 120.81 Exceptions and special requirements; general
2144 areas.—

2145 (3) PRISONERS AND PAROLEES.—

2146 (a) Notwithstanding s. 120.52(13), prisoners, as defined
2147 by s. 944.02, shall not be considered parties in any proceedings
2148 other than those under s. 120.54(3)(c) or (6) ~~(7)~~, and may not
2149 seek judicial review under s. 120.68 of any other agency action.
2150 Prisoners are not eligible to seek an administrative

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2151 determination of an agency statement under s. 120.56(4).
2152 Parolees shall not be considered parties for purposes of agency
2153 action or judicial review when the proceedings relate to the
2154 rescission or revocation of parole.

2155 (4) REGULATION OF PROFESSIONS.—Notwithstanding s.
2156 120.569(5)(f) ~~120.569(2)(g)~~, in a proceeding against a licensed
2157 professional or in a proceeding for licensure of an applicant
2158 for professional licensure which involves allegations of sexual
2159 misconduct:

2160 (a) The testimony of the victim of the sexual misconduct
2161 need not be corroborated.

2162 (b) Specific instances of prior consensual sexual activity
2163 between the victim of the sexual misconduct and any person other
2164 than the offender is inadmissible, unless:

2165 1. It is first established to the administrative law judge
2166 in a proceeding in camera that the victim of the sexual
2167 misconduct is mistaken as to the identity of the perpetrator of
2168 the sexual misconduct; or

2169 2. If consent by the victim of the sexual misconduct is at
2170 issue and it is first established to the administrative law
2171 judge in a proceeding in camera that such evidence tends to
2172 establish a pattern of conduct or behavior on the part of such
2173 victim which is so similar to the conduct or behavior in the
2174 case that it is relevant to the issue of consent.

2175 (c) Reputation evidence relating to the prior sexual

2176 | conduct of a victim of sexual misconduct is inadmissible.

2177 | Section 21. Subsection (8) of section 349.04, Florida
2178 | Statutes, is amended to read:

2179 | 349.04 Purposes and powers.—

2180 | (8) The authority may conduct public meetings and
2181 | workshops by means of telecommunications ~~communications media~~
2182 | ~~technology~~, as provided in s. 120.5401 ~~120.54(5)~~. However, a
2183 | resolution, rule, or formal action is not binding unless a
2184 | quorum is physically present at the noticed meeting location,
2185 | and only members physically present may vote on any item.

2186 | Section 22. Section 373.4271, Florida Statutes, is amended
2187 | to read:

2188 | 373.4271 Conduct of challenge to consolidated
2189 | environmental resource permit or associated variance or
2190 | sovereign submerged lands authorization issued in connection
2191 | with deepwater ports.—Notwithstanding s. 120.569, s. 120.57, or
2192 | s. 373.427, or any other provision of law to the contrary, a
2193 | challenge to a consolidated environmental resource permit or any
2194 | associated variance or any sovereign submerged lands
2195 | authorization proposed or issued by the Department of
2196 | Environmental Protection in connection with the state's
2197 | deepwater ports, as listed in s. 403.021(9), shall be conducted
2198 | pursuant to the summary hearing provisions of s. 120.574;
2199 | however, the summary proceeding shall be conducted within 30
2200 | days after a party files a motion for a summary hearing,

2201 regardless of whether the parties agree to the summary
 2202 proceeding, and the administrative law judge's decision shall be
 2203 in the form of a recommended order and does not constitute final
 2204 agency action of the department. The Department of Environmental
 2205 Protection shall issue the final order within 45 working days
 2206 after receipt of the administrative law judge's recommended
 2207 order. The summary hearing provisions of this section apply to
 2208 pending administrative proceedings; however, s. 120.574(1)(a)
 2209 and (c) ~~120.574(1)(b) and (d)~~ and (2)(a)3. and 5. do not apply
 2210 to pending administrative proceedings. This section shall take
 2211 effect upon this act becoming a law.

2212 Section 23. Subsection (3) of section 374.983, Florida
 2213 Statutes, is amended to read:

2214 374.983 Governing body.—

2215 (3) The officers of the board shall be: one chair, one
 2216 vice chair, one secretary, and one treasurer; provided, however,
 2217 that no one person shall be eligible to hold more than one of
 2218 said offices at one and the same time. The officers shall be
 2219 elected from the board by the members thereof. Six members of
 2220 the board of commissioners shall constitute a quorum, and the
 2221 vote of a majority of such quorum shall be necessary to the
 2222 transaction of business. Board and committee meetings may be
 2223 conducted utilizing telecommunications ~~communications media~~
 2224 ~~technology~~, pursuant to s. 120.5401 ~~120.54(5)(b)2~~. The chair
 2225 shall have the right to vote at all meetings of the board.

2226 Special meetings of the board may be called at any time by the
 2227 chair, with notice thereof to be given to each member of the
 2228 board.

2229 Section 24. Subsection (12) of section 380.05, Florida
 2230 Statutes, is amended to read:

2231 380.05 Areas of critical state concern.—

2232 (12) Upon the request of a substantially interested person
 2233 pursuant to s. 120.54(6) ~~120.54(7)~~, a local government or
 2234 regional planning agency within the designated area, or the
 2235 state land planning agency, the commission may by rule remove,
 2236 contract, or expand any designated boundary. Boundary expansions
 2237 are subject to legislative review pursuant to paragraph (1)(c).
 2238 No boundary may be modified without a specific finding by the
 2239 commission that such changes are consistent with necessary
 2240 resource protection. The total boundaries of an entire area of
 2241 critical state concern shall not be removed by the commission
 2242 unless a minimum time of 1 year has elapsed from the adoption of
 2243 regulations and a local comprehensive plan pursuant to
 2244 subsection (1), subsection (6), subsection (8), or subsection
 2245 (10). Before totally removing such boundaries, the commission
 2246 shall make findings that the regulations and plans adopted
 2247 pursuant to subsection (1), subsection (6), subsection (8), or
 2248 subsection (10) are being effectively implemented by local
 2249 governments within the area of critical state concern to protect
 2250 the area and that adopted local government comprehensive plans

2251 within the area have been conformed to principles for guiding
 2252 development for the area.

2253 Section 25. Paragraphs (b) and (c) of subsection (7) of
 2254 section 409.2564, Florida Statutes, are amended to read:

2255 409.2564 Actions for support.—

2256 (7) The director of the department, or the director's
 2257 designee, is authorized to subpoena from any person financial
 2258 and other information necessary to establish, modify, or enforce
 2259 a child support order.

2260 (b) Subpoenas issued by the department or another state's
 2261 Title IV-D agency may be challenged in accordance with s.
 2262 120.569(5)(g)1. ~~120.569(2)(k)1.~~ While a subpoena is being
 2263 challenged, the department may not impose a fine as provided for
 2264 under paragraph (c) until the challenge is complete and the
 2265 subpoena has been found to be valid.

2266 (c) The department is authorized to impose a fine for
 2267 failure to comply with a subpoena. Failure to comply with the
 2268 subpoena, or to challenge the subpoena as provided in paragraph
 2269 (b), within 15 days after service of the subpoena may result in
 2270 the agency taking the following actions:

2271 1. Imposition of an administrative fine of not more than
 2272 \$500.

2273 2. Enforcement of the subpoena as provided in s.
 2274 120.569(5)(g)2. ~~120.569(2)(k)2.~~ When the subpoena is enforced
 2275 pursuant to s. 120.569(5)(g)2. ~~120.569(2)(k)2.~~, the court may

2276 | award costs and fees to the prevailing party in accordance with
 2277 | that section.

2278 | Section 26. Paragraph (b) of subsection (2) of section
 2279 | 409.285, Florida Statutes, is amended to read:

2280 | 409.285 Opportunity for hearing and appeal.—

2281 | (2) Appeals related to Medicaid programs directly
 2282 | administered by the Agency for Health Care Administration,
 2283 | including appeals related to Florida's Statewide Medicaid
 2284 | Managed Care program and associated federal waivers, filed on or
 2285 | after March 1, 2017, must be directed to the agency in the
 2286 | manner and form prescribed by the agency. The department and the
 2287 | agency shall establish a transition process to transfer
 2288 | administration of these appeals from the department to the
 2289 | agency by March 1, 2017.

2290 | (b) Notwithstanding ss. 120.569 and 120.57, hearings
 2291 | conducted by the Agency for Health Care Administration pursuant
 2292 | to this subsection are subject to federal regulations and
 2293 | requirements relating to Medicaid appeals, are exempt from the
 2294 | uniform rules of procedure under s. 120.5401 ~~120.54(5)~~, and are
 2295 | not required to be conducted by an administrative law judge
 2296 | assigned by the Division of Administrative Hearings.

2297 | Section 27. Paragraph (f) of subsection (1) of section
 2298 | 409.908, Florida Statutes, is amended to read:

2299 | 409.908 Reimbursement of Medicaid providers.—Subject to
 2300 | specific appropriations, the agency shall reimburse Medicaid

2301 providers, in accordance with state and federal law, according
2302 to methodologies set forth in the rules of the agency and in
2303 policy manuals and handbooks incorporated by reference therein.
2304 These methodologies may include fee schedules, reimbursement
2305 methods based on cost reporting, negotiated fees, competitive
2306 bidding pursuant to s. 287.057, and other mechanisms the agency
2307 considers efficient and effective for purchasing services or
2308 goods on behalf of recipients. If a provider is reimbursed based
2309 on cost reporting and submits a cost report late and that cost
2310 report would have been used to set a lower reimbursement rate
2311 for a rate semester, then the provider's rate for that semester
2312 shall be retroactively calculated using the new cost report, and
2313 full payment at the recalculated rate shall be effected
2314 retroactively. Medicare-granted extensions for filing cost
2315 reports, if applicable, shall also apply to Medicaid cost
2316 reports. Payment for Medicaid compensable services made on
2317 behalf of Medicaid eligible persons is subject to the
2318 availability of moneys and any limitations or directions
2319 provided for in the General Appropriations Act or chapter 216.
2320 Further, nothing in this section shall be construed to prevent
2321 or limit the agency from adjusting fees, reimbursement rates,
2322 lengths of stay, number of visits, or number of services, or
2323 making any other adjustments necessary to comply with the
2324 availability of moneys and any limitations or directions
2325 provided for in the General Appropriations Act, provided the

2326 adjustment is consistent with legislative intent.

2327 (1) Reimbursement to hospitals licensed under part I of
2328 chapter 395 must be made prospectively or on the basis of
2329 negotiation.

2330 (f)1. Pursuant to chapter 120, the agency shall furnish to
2331 providers written notice of the audited hospital cost-based per
2332 diem reimbursement rate for inpatient and outpatient care
2333 established by the agency. The written notice constitutes final
2334 agency action. A substantially affected provider seeking to
2335 correct or adjust the calculation of the audited hospital cost-
2336 based per diem reimbursement rate for inpatient and outpatient
2337 care, other than a challenge to the methodologies set forth in
2338 the rules of the agency and in reimbursement plans incorporated
2339 by reference therein used to calculate the reimbursement rate
2340 for inpatient and outpatient care, may request an administrative
2341 hearing to challenge the final agency action by filing a
2342 petition with the agency within 180 days after receipt of the
2343 written notice by the provider. The petition must include all
2344 documentation supporting the challenge upon which the provider
2345 intends to rely at the administrative hearing and may not be
2346 amended or supplemented except as authorized under uniform rules
2347 adopted pursuant to s. 120.5401 ~~120.54(5)~~. The failure to timely
2348 file a petition in compliance with this subparagraph is deemed
2349 conclusive acceptance of the audited hospital cost-based per
2350 diem reimbursement rate for inpatient and outpatient care

2351 established by the agency.

2352 2. Any challenge to the methodologies set forth in the
2353 rules of the agency and in reimbursement plans incorporated by
2354 reference therein used to calculate the reimbursement rate for
2355 inpatient and outpatient care may not result in a correction or
2356 an adjustment of a reimbursement rate for a rate period that
2357 occurred more than 5 years before the date the petition
2358 initiating the proceeding was filed.

2359 3. This paragraph applies to any challenge to final agency
2360 action which seeks the correction or adjustment of a provider's
2361 audited hospital cost-based per diem reimbursement rate for
2362 inpatient and outpatient care and to any challenge to the
2363 methodologies set forth in the rules of the agency and in
2364 reimbursement plans incorporated by reference therein used to
2365 calculate the reimbursement rate for inpatient and outpatient
2366 care, including any right to challenge which arose before July
2367 1, 2015. A correction or adjustment of an audited hospital cost-
2368 based per diem reimbursement rate for inpatient and outpatient
2369 care which is required by an administrative order or appellate
2370 decision:

2371 a. Must be reconciled in the first rate period after the
2372 order or decision becomes final.

2373 b. May not be the basis for any challenge to correct or
2374 adjust hospital rates required to be paid by any Medicaid
2375 managed care provider pursuant to part IV of this chapter.

2376 4. The agency may not be compelled by an administrative
 2377 body or a court to pay additional compensation to a hospital
 2378 relating to the establishment of audited hospital cost-based per
 2379 diem reimbursement rates by the agency or for remedies relating
 2380 to such rates, unless an appropriation has been made by law for
 2381 the exclusive, specific purpose of paying such additional
 2382 compensation. As used in this subparagraph, the term
 2383 "appropriation made by law" has the same meaning as provided in
 2384 s. 11.066.

2385 5. Any period of time specified in this paragraph is not
 2386 tolled by the pendency of any administrative or appellate
 2387 proceeding.

2388 6. The exclusive means to challenge a written notice of an
 2389 audited hospital cost-based per diem reimbursement rate for
 2390 inpatient and outpatient care for the purpose of correcting or
 2391 adjusting such rate before, on, or after July 1, 2015, or to
 2392 challenge the methodologies set forth in the rules of the agency
 2393 and in reimbursement plans incorporated by reference therein
 2394 used to calculate the reimbursement rate for inpatient and
 2395 outpatient care is through an administrative proceeding pursuant
 2396 to chapter 120.

2397 Section 28. Paragraph (d) of subsection (16) of section
 2398 409.913, Florida Statutes, is amended to read:

2399 409.913 Oversight of the integrity of the Medicaid
 2400 program.—The agency shall operate a program to oversee the

2401 activities of Florida Medicaid recipients, and providers and
2402 their representatives, to ensure that fraudulent and abusive
2403 behavior and neglect of recipients occur to the minimum extent
2404 possible, and to recover overpayments and impose sanctions as
2405 appropriate. Beginning January 1, 2003, and each year
2406 thereafter, the agency and the Medicaid Fraud Control Unit of
2407 the Department of Legal Affairs shall submit a joint report to
2408 the Legislature documenting the effectiveness of the state's
2409 efforts to control Medicaid fraud and abuse and to recover
2410 Medicaid overpayments during the previous fiscal year. The
2411 report must describe the number of cases opened and investigated
2412 each year; the sources of the cases opened; the disposition of
2413 the cases closed each year; the amount of overpayments alleged
2414 in preliminary and final audit letters; the number and amount of
2415 fines or penalties imposed; any reductions in overpayment
2416 amounts negotiated in settlement agreements or by other means;
2417 the amount of final agency determinations of overpayments; the
2418 amount deducted from federal claiming as a result of
2419 overpayments; the amount of overpayments recovered each year;
2420 the amount of cost of investigation recovered each year; the
2421 average length of time to collect from the time the case was
2422 opened until the overpayment is paid in full; the amount
2423 determined as uncollectible and the portion of the uncollectible
2424 amount subsequently reclaimed from the Federal Government; the
2425 number of providers, by type, that are terminated from

2426 participation in the Medicaid program as a result of fraud and
 2427 abuse; and all costs associated with discovering and prosecuting
 2428 cases of Medicaid overpayments and making recoveries in such
 2429 cases. The report must also document actions taken to prevent
 2430 overpayments and the number of providers prevented from
 2431 enrolling in or reenrolling in the Medicaid program as a result
 2432 of documented Medicaid fraud and abuse and must include policy
 2433 recommendations necessary to prevent or recover overpayments and
 2434 changes necessary to prevent and detect Medicaid fraud. All
 2435 policy recommendations in the report must include a detailed
 2436 fiscal analysis, including, but not limited to, implementation
 2437 costs, estimated savings to the Medicaid program, and the return
 2438 on investment. The agency must submit the policy recommendations
 2439 and fiscal analyses in the report to the appropriate estimating
 2440 conference, pursuant to s. 216.137, by February 15 of each year.
 2441 The agency and the Medicaid Fraud Control Unit of the Department
 2442 of Legal Affairs each must include detailed unit-specific
 2443 performance standards, benchmarks, and metrics in the report,
 2444 including projected cost savings to the state Medicaid program
 2445 during the following fiscal year.

2446 (16) The agency shall impose any of the following
 2447 sanctions or disincentives on a provider or a person for any of
 2448 the acts described in subsection (15):

2449 (d) Immediate suspension, if the agency has received
 2450 information of patient abuse or neglect or of any act prohibited

2451 by s. 409.920. Upon suspension, the agency must issue an
 2452 immediate final order under s. 120.569(5)(k) ~~120.569(2)(n)~~.

2453
 2454 If a provider voluntarily relinquishes its Medicaid provider
 2455 number or an associated license, or allows the associated
 2456 licensure to expire after receiving written notice that the
 2457 agency is conducting, or has conducted, an audit, survey,
 2458 inspection, or investigation and that a sanction of suspension
 2459 or termination will or would be imposed for noncompliance
 2460 discovered as a result of the audit, survey, inspection, or
 2461 investigation, the agency shall impose the sanction of
 2462 termination for cause against the provider. The agency's
 2463 termination with cause is subject to hearing rights as may be
 2464 provided under chapter 120. The Secretary of Health Care
 2465 Administration may make a determination that imposition of a
 2466 sanction or disincentive is not in the best interest of the
 2467 Medicaid program, in which case a sanction or disincentive may
 2468 not be imposed.

2469 Section 29. Paragraph (b) of subsection (4) of section
 2470 443.151, Florida Statutes, is amended to read:

2471 443.151 Procedure concerning claims.—

2472 (4) APPEALS.—

2473 (b) Filing and hearing.—

2474 1. The claimant or any other party entitled to notice of a
 2475 determination may appeal an adverse determination to an appeals

2476 referee within 20 days after the date of mailing of the notice
2477 to her or his last known address or, if the notice is not
2478 mailed, within 20 days after the date of delivering the notice.

2479 2. Unless the appeal is untimely or withdrawn or review is
2480 initiated by the commission, the appeals referee, after mailing
2481 all parties and attorneys of record a notice of hearing at least
2482 10 days before the date of hearing, notwithstanding the 14-day
2483 notice requirement in s. 120.569(5)(b) ~~120.569(2)(b)~~, may only
2484 affirm, modify, or reverse the determination. An appeal may not
2485 be withdrawn without the permission of the appeals referee.

2486 3. However, if an appeal appears to have been filed after
2487 the permissible time limit, the Office of Appeals may issue an
2488 order to show cause to the appellant which requires the
2489 appellant to show why the appeal should not be dismissed as
2490 untimely. If, within 15 days after the mailing date of the order
2491 to show cause, the appellant does not provide written evidence
2492 of timely filing or good cause for failure to appeal timely, the
2493 appeal shall be dismissed.

2494 4. If an appeal involves a question of whether services
2495 were performed by a claimant in employment or for an employer,
2496 the referee must give special notice of the question and of the
2497 pendency of the appeal to the employing unit and to the
2498 department, both of which become parties to the proceeding.

2499 5.a. Any part of the evidence may be received in written
2500 form, and all testimony of parties and witnesses shall be made

2501 | under oath.

2502 | b. Irrelevant, immaterial, or unduly repetitious evidence
2503 | shall be excluded, but all other evidence of a type commonly
2504 | relied upon by reasonably prudent persons in the conduct of
2505 | their affairs is admissible, whether or not such evidence would
2506 | be admissible in a trial in state court.

2507 | c. Hearsay evidence may be used for the purpose of
2508 | supplementing or explaining other evidence, or to support a
2509 | finding if it would be admissible over objection in civil
2510 | actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may
2511 | support a finding of fact if:

2512 | (I) The party against whom it is offered has a reasonable
2513 | opportunity to review such evidence prior to the hearing; and

2514 | (II) The appeals referee or special deputy determines,
2515 | after considering all relevant facts and circumstances, that the
2516 | evidence is trustworthy and probative and that the interests of
2517 | justice are best served by its admission into evidence.

2518 | 6. The parties must be notified promptly of the referee's
2519 | decision. The referee's decision is final unless further review
2520 | is initiated under paragraph (c) within 20 days after the date
2521 | of mailing notice of the decision to the party's last known
2522 | address or, in lieu of mailing, within 20 days after the
2523 | delivery of the notice.

2524 | Section 30. Subsection (2) of section 455.211, Florida
2525 | Statutes, is amended to read:

2526 455.211 Board rules; final agency action; challenges.—
 2527 (2) In addition, either the secretary or the board shall
 2528 be a substantially interested party for purposes of s. 120.54(6)
 2529 ~~120.54(7)~~. The board may, as an adversely affected party,
 2530 initiate and maintain an action pursuant to s. 120.68
 2531 challenging the final agency action.

2532 Section 31. Subsection (2) of section 456.012, Florida
 2533 Statutes, is amended to read:

2534 456.012 Board rules; final agency action; challenges.—

2535 (2) In addition, either the State Surgeon General or the
 2536 board shall be a substantially interested party for purposes of
 2537 s. 120.54(6) ~~120.54(7)~~. The board may, as an adversely affected
 2538 party, initiate and maintain an action pursuant to s. 120.68
 2539 challenging the final agency action.

2540 Section 32. Subsection (5) of section 456.073, Florida
 2541 Statutes, is amended to read:

2542 456.073 Disciplinary proceedings.—Disciplinary proceedings
 2543 for each board shall be within the jurisdiction of the
 2544 department.

2545 (5) A formal hearing before an administrative law judge
 2546 from the Division of Administrative Hearings shall be held
 2547 pursuant to chapter 120 if there are any disputed issues of
 2548 material fact. The determination of whether or not a licensee
 2549 has violated the laws and rules regulating the profession,
 2550 including a determination of the reasonable standard of care, is

2551 a conclusion of law to be determined by the board, or department
2552 when there is no board, and is not a finding of fact to be
2553 determined by an administrative law judge. The administrative
2554 law judge shall issue a recommended order pursuant to chapter
2555 120. Notwithstanding s. 120.569(5) ~~120.569(2)~~, the department
2556 shall notify the division within 45 days after receipt of a
2557 petition or request for a formal hearing.

2558 Section 33. Subsection (4) of section 472.008, Florida
2559 Statutes, is amended to read:

2560 472.008 Rules of the board.—

2561 (4) The department or the board is a substantially
2562 interested party for purposes of s. 120.54(6) ~~120.54(7)~~. The
2563 board may, as an adversely affected party, initiate and maintain
2564 an action pursuant to s. 120.68 challenging final agency action.

2565 Section 34. Subsection (10) of section 496.419, Florida
2566 Statutes, is amended to read:

2567 496.419 Powers of the department.—

2568 (10) A finding of a violation of s. 496.415(3), (5), (6),
2569 (10), (12), (13), or (14) constitutes an immediate threat to the
2570 public health, safety, and welfare and is sufficient grounds for
2571 the department to issue an immediate order to cease and desist
2572 all solicitation activities. The order shall act as an immediate
2573 final order under s. 120.569(5)(k) ~~120.569(2)(n)~~ and shall
2574 remain in effect until the violation has been remedied pursuant
2575 to this chapter.

2576 Section 35. Subsection (3) of section 497.157, Florida
 2577 Statutes, is amended to read:

2578 497.157 Unlicensed practice; remedies concerning
 2579 violations by unlicensed persons.—

2580 (3) When ~~Where~~ the department determines that an emergency
 2581 exists regarding any violation of this chapter by any unlicensed
 2582 person or entity, the department may issue and serve an
 2583 immediate final order upon such unlicensed person or entity, in
 2584 accordance with s. 120.569(5)(k) ~~120.569(2)(n)~~. Such an
 2585 immediate final order may impose such prohibitions and
 2586 requirements as are reasonably necessary to protect the public
 2587 health, safety, and welfare, and shall be effective when served.

2588 (a) For the purpose of enforcing such an immediate final
 2589 order, the department may file an emergency or other proceeding
 2590 in the circuit courts of the state seeking enforcement of the
 2591 immediate final order by injunctive or other order of the court.
 2592 The court shall issue its injunction or other order enforcing
 2593 the immediate final order pending administrative resolution of
 2594 the matter under subsection (2), unless the court determines
 2595 that such action would work a manifest injustice under the
 2596 circumstances. Venue for judicial actions under this paragraph
 2597 shall be, at the election of the department, in the courts of
 2598 Leon County, or in a county where the respondent resides or has
 2599 a place of business.

2600 (b) After serving an immediate final order to cease and

2601 desist upon any person or entity, the department shall within 10
 2602 days issue and serve upon the same person or entity an
 2603 administrative complaint as set forth in subsection (2), except
 2604 that, absent order of a court to the contrary, the immediate
 2605 final order shall be effective throughout the pendency of
 2606 proceedings under subsection (2).

2607 Section 36. Subsection (3) of section 501.608, Florida
 2608 Statutes, is amended to read:

2609 501.608 License or affidavit of exemption; occupational
 2610 license.—

2611 (3) Failure to obtain or display a license or a receipt of
 2612 filing of an affidavit of exemption is sufficient grounds for
 2613 the department to issue an immediate cease and desist order,
 2614 which shall act as an immediate final order under s.

2615 120.569(5)(k) ~~120.569(2)(n)~~. The order shall remain in effect
 2616 until the commercial telephone seller or a person claiming to be
 2617 exempt shows the authorities that he or she is properly licensed
 2618 or exempt. The department may order the business to cease
 2619 operations and shall order the phones to be shut off. Failure of
 2620 a salesperson to display a license or a receipt of filing of an
 2621 affidavit of exemption may result in the salesperson being
 2622 summarily ordered by the department to leave the office until he
 2623 or she can produce a license or a receipt of filing of an
 2624 affidavit of exemption for the department.

2625 Section 37. Subsection (10) of section 552.40, Florida

2626 Statutes, is amended to read:

2627 552.40 Administrative remedy for alleged damage due to the
2628 use of explosives in connection with construction materials
2629 mining activities.—

2630 (10) Except as otherwise provided in this chapter, the
2631 procedure for the administrative proceedings provided by this
2632 act must be governed by the uniform rules of procedure for
2633 decisions determining substantial interests which are authorized
2634 by s. 120.5401 ~~120.54(5)~~, notwithstanding the fact that those
2635 rules implement provisions of chapter 120 which are applicable
2636 to proposed or final agency action.

2637 Section 38. Paragraph (a) of subsection (5) of section
2638 628.461, Florida Statutes, is amended to read:

2639 628.461 Acquisition of controlling stock.—

2640 (5) (a) The acquisition of voting securities shall be
2641 deemed approved unless the office disapproves the proposed
2642 acquisition within 90 days after the statement required by
2643 subsection (1) has been filed. The office may on its own
2644 initiate, or if requested to do so in writing by a substantially
2645 affected party shall conduct, a proceeding to consider the
2646 appropriateness of the proposed filing. The 90-day time period
2647 shall be tolled during the pendency of the proceeding. Any
2648 written request for a proceeding must be filed with the office
2649 within 10 days after ~~of~~ the date notice of the filing is given.
2650 During the pendency of the proceeding or review period by the

2651 office, any person or affiliated person complying with the
 2652 filing requirements of this section may proceed and take all
 2653 steps necessary to conclude the acquisition so long as the
 2654 acquisition becoming final is conditioned upon obtaining office
 2655 approval. The office shall, however, at any time that it finds
 2656 an immediate danger to the public health, safety, and welfare of
 2657 the domestic policyholders exists, immediately order, pursuant
 2658 to s. 120.569(5)(k) ~~120.569(2)(n)~~, the proposed acquisition
 2659 temporarily disapproved and any further steps to conclude the
 2660 acquisition ceased.

2661 Section 39. Paragraph (a) of subsection (6) of section
 2662 628.4615, Florida Statutes, is amended to read:

2663 628.4615 Specialty insurers; acquisition of controlling
 2664 stock, ownership interest, assets, or control; merger or
 2665 consolidation.—

2666 (6) (a) The acquisition application shall be reviewed in
 2667 accordance with chapter 120. The office may on its own initiate,
 2668 or, if requested to do so in writing by a substantially affected
 2669 person, shall conduct, a proceeding to consider the
 2670 appropriateness of the proposed filing. Time periods for
 2671 purposes of chapter 120 shall be tolled during the pendency of
 2672 the proceeding. Any written request for a proceeding must be
 2673 filed with the office within 10 days after ~~of~~ the date notice of
 2674 the filing is given. During the pendency of the proceeding or
 2675 review period by the office, any person or affiliated person

2676 | complying with the filing requirements of this section may
 2677 | proceed and take all steps necessary to conclude the acquisition
 2678 | so long as the acquisition becoming final is conditioned upon
 2679 | obtaining office approval. The office shall, however, at any
 2680 | time it finds an immediate danger to the public health, safety,
 2681 | and welfare of the insureds exists, immediately order, pursuant
 2682 | to s. 120.569(5)(k) ~~120.569(2)(n)~~, the proposed acquisition
 2683 | disapproved and any further steps to conclude the acquisition
 2684 | ceased.

2685 | Section 40. Paragraph (a) of subsection (2) of section
 2686 | 633.228, Florida Statutes, is amended to read:

2687 | 633.228 Violations; orders to cease and desist, correct
 2688 | hazardous conditions, preclude occupancy, or vacate;
 2689 | enforcement; penalties.—

2690 | (2)(a) If, during the conduct of a firesafety inspection
 2691 | authorized by ss. 633.216 and 633.218, it is determined that a
 2692 | violation described in this section exists which poses an
 2693 | immediate danger to the public health, safety, or welfare, the
 2694 | State Fire Marshal may issue an order to vacate the building in
 2695 | question, which order shall be immediately effective and shall
 2696 | be an immediate final order under s. 120.569(5)(k)
 2697 | ~~120.569(2)(n)~~. With respect to a facility under the jurisdiction
 2698 | of a district school board or community college board of
 2699 | trustees, the order to vacate shall be issued jointly by the
 2700 | district superintendent or college president and the State Fire

2701 Marshal.

2702 Section 41. Subsection (6) of section 760.11, Florida
 2703 Statutes, is amended to read:

2704 760.11 Administrative and civil remedies; construction.—

2705 (6) Any administrative hearing brought pursuant to
 2706 paragraph (4) (b) shall be conducted under ss. 120.569 and
 2707 120.57. The commission may hear the case provided that the final
 2708 order is issued by members of the commission who did not conduct
 2709 the hearing or the commission may request that it be heard by an
 2710 administrative law judge pursuant to s. 120.569(3) (a)
 2711 ~~120.569(2) (a)~~. If the commission elects to hear the case, it may
 2712 be heard by a commissioner. If the commissioner, after the
 2713 hearing, finds that a violation of the Florida Civil Rights Act
 2714 of 1992 has occurred, the commissioner shall issue an
 2715 appropriate proposed order in accordance with chapter 120
 2716 prohibiting the practice and providing affirmative relief from
 2717 the effects of the practice, including back pay. If the
 2718 administrative law judge, after the hearing, finds that a
 2719 violation of the Florida Civil Rights Act of 1992 has occurred,
 2720 the administrative law judge shall issue an appropriate
 2721 recommended order in accordance with chapter 120 prohibiting the
 2722 practice and providing affirmative relief from the effects of
 2723 the practice, including back pay. Within 90 days after ~~of~~ the
 2724 date the recommended or proposed order is rendered, the
 2725 commission shall issue a final order by adopting, rejecting, or

2726 modifying the recommended order as provided under ss. 120.569
2727 and 120.57. The 90-day period may be extended with the consent
2728 of all the parties. An administrative hearing pursuant to
2729 paragraph (4)(b) must be requested no later than 35 days after
2730 the date of determination of reasonable cause by the commission.
2731 In any action or proceeding under this subsection, the
2732 commission, in its discretion, may allow the prevailing party a
2733 reasonable attorney ~~attorney's~~ fee as part of the costs. It is
2734 the intent of the Legislature that this provision for attorney
2735 ~~attorney's~~ fees be interpreted in a manner consistent with
2736 federal case law involving a Title VII action.

2737 Section 42. Subsection (2) of section 766.207, Florida
2738 Statutes, is amended to read:

2739 766.207 Voluntary binding arbitration of medical
2740 negligence claims.—

2741 (2) Upon the completion of presuit investigation with
2742 preliminary reasonable grounds for a medical negligence claim
2743 intact, the parties may elect to have damages determined by an
2744 arbitration panel. Such election may be initiated by either
2745 party by serving a request for voluntary binding arbitration of
2746 damages within 90 days after service of the claimant's notice of
2747 intent to initiate litigation upon the defendant. The
2748 evidentiary standards for voluntary binding arbitration of
2749 medical negligence claims shall be as provided in ss.
2750 120.569(5)(f)1. ~~120.569(2)(g)~~ and 120.57(1)(c).

2751 Section 43. Subsection (4) of section 893.0355, Florida
 2752 Statutes, is amended to read:

2753 893.0355 Control of scheduled substances; delegation of
 2754 authority to Attorney General to reschedule substance, or delete
 2755 substance, by rule.—

2756 (4) Rulemaking under this section shall be in accordance
 2757 with the procedural requirements of chapter 120, including the
 2758 emergency rule provisions found in s. 120.54, except that s.
 2759 120.54(6) ~~120.54(7)~~ does not apply.

2760 Section 44. Paragraph (p) of subsection (9) of section
 2761 1002.33, Florida Statutes, is amended to read:

2762 1002.33 Charter schools.—

2763 (9) CHARTER SCHOOL REQUIREMENTS.—

2764 (p)1. Each charter school shall maintain a website that
 2765 enables the public to obtain information regarding the school;
 2766 the school's academic performance; the names of the governing
 2767 board members; the programs at the school; any management
 2768 companies, service providers, or education management
 2769 corporations associated with the school; the school's annual
 2770 budget and its annual independent fiscal audit; the school's
 2771 grade pursuant to s. 1008.34; and, on a quarterly basis, the
 2772 minutes of governing board meetings.

2773 2. Each charter school's governing board must appoint a
 2774 representative to facilitate parental involvement, provide
 2775 access to information, assist parents and others with questions

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2776 and concerns, and resolve disputes. The representative must
2777 reside in the school district in which the charter school is
2778 located and may be a governing board member, a charter school
2779 employee, or an individual contracted to represent the governing
2780 board. If the governing board oversees multiple charter schools
2781 in the same school district, the governing board must appoint a
2782 separate representative for each charter school in the district.
2783 The representative's contact information must be provided
2784 annually in writing to parents and posted prominently on the
2785 charter school's website. The sponsor may not require governing
2786 board members to reside in the school district in which the
2787 charter school is located if the charter school complies with
2788 this subparagraph.

2789 3. Each charter school's governing board must hold at
2790 least two public meetings per school year in the school district
2791 where the charter school is located. The meetings must be
2792 noticed, open, and accessible to the public, and attendees must
2793 be provided an opportunity to receive information and provide
2794 input regarding the charter school's operations. The appointed
2795 representative and charter school principal or director, or his
2796 or her designee, must be physically present at each meeting.
2797 Members of the governing board may attend in person or by means
2798 of telecommunications ~~communications media technology~~ used in
2799 accordance with rules adopted by the Administration Commission
2800 under s. 120.5401 ~~120.54(5)~~.

2801 Section 45. Subsection (7) of section 1013.30, Florida
2802 Statutes, is amended to read:

2803 1013.30 University campus master plans and campus
2804 development agreements.—

2805 (7) Notice that the campus master plan has been adopted
2806 must be forwarded within 45 days after its adoption to any
2807 affected person that submitted comments on the draft campus
2808 master plan. The notice must state how and where a copy of the
2809 master plan may be obtained or inspected. Within 30 days after
2810 receipt of the notice of adoption of the campus master plan, or
2811 30 days after the date the adopted plan is available for review,
2812 whichever is later, an affected person who submitted comments on
2813 the draft master plan may petition the university board of
2814 trustees, challenging the campus master plan as not being in
2815 compliance with this section or any rule adopted under this
2816 section. The petition must state each objection, identify its
2817 source, and provide a recommended action. A petition filed by an
2818 affected local government may raise only those issues directly
2819 pertaining to the public facilities or services that the
2820 affected local government provides to or maintains within the
2821 campus or to the direct impact that campus development would
2822 have on the affected local government. A petition filed by an
2823 affected person must include those items required by the uniform
2824 rules adopted under s. 120.5401 ~~120.54(5)~~. Any affected person
2825 who files a petition under this subsection may challenge only

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2826 | those provisions in the plan that were raised by that person's
2827 | oral or written comments, recommendations, or objections
2828 | presented to the university board of trustees, as required by
2829 | paragraph (2) (b). The university may, during the pendency of a
2830 | challenge, negotiate a campus development agreement as provided
2831 | in subsection (11).

2832 | Section 46. This act shall take effect July 1, 2017.